

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 6<sup>th</sup> June, 2018

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

### PRAYER

### PETITION

#### KIBERA INTERNALLY DISPLACED PERSONS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I hereby report to the Senate that a petition has been submitted through the Clerk by Rev. David Muganda on behalf of Kibera Internally Displaced Persons (IDPs).

As you are aware under Article 119(1) of the Constitution, which states:-

“Every person has a right to petition Parliament to consider any matter within its authority including enacting amending or repealing and legislation.”

Hon. Senators, the salient issues raised in the said petition are:

(1) That an estimated 90,000 IDPs were displaced in Kibera during the 2007/2008 post-election skirmishes.

(2) That Parliament discussed and passed a budget for the fiscal year 2016/2017 for IDPs integrated resettlement.

(3) The Chairman of the National Coordination Consultative Committee (NCCC) confirmed that over 90,000 integrated IDPs were to be settled with this amount.

(4) The Government of Kenya has the list for IDPs who genuinely deserve allocation through the NCCC office.

(5) The government accepted the Kibera IDPs through the then District Commissioner for the fund payment and resettlement.

(6) That many IDPs were left out of the government disbursement allocation.

The petitioners therefore pray that the Senate investigates this matter to ensure:-

(1) There is full compensation of the IDPs as per the Government list.

(2) That a thorough scrutiny is done to the records of payment of the NCCC.

(3) That the office of the NCCC on IDPs should be operationalized to serve its citizenry.

(4) That all the IDPs should get equal share as per the resettlement program, including land.

Hon. Senators, pursuant to Standing Order 225, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes. Is there no request?

Proceed, Sen. Malalah.

Order, Sen. Wetangula! You know what to do if you are requesting.

Sen. Malalah, I will not give you more than three minutes

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I acknowledge that this is a matter of great importance. I am of the view that this matter be handled with some urgency because we are alive to the fact that in 2007, there are some communities which were affected. It is sad that certain communities in this country have been resettled, yet other communities have not. We want an audit of those who have been resettled and those who have not been resettled.

It is sad, Mr. Deputy Speaker, Sir, that in December, 2007, I happened to bump into a group of people who had come to collect Kshs50,000 each at the Kenya Commercial Bank (KCB), Kakamega Branch. When I interrogated them, they told me that they had been told to register as IDPs in Lugari and Nautuma area just to get the payment. It is clear that there is a lot of misappropriation and conmanship in the disbursement of these funds to IDP beneficiaries.

Therefore it is important that we look into this petition with a lot of seriousness. We know that Kibera was a hotspot and it is important we look into this matter with a lot of seriousness. As a House, we need to interrogate what has been paid so far and which communities have benefitted from the fund.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Wambua.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, in support of the Petition, the matter of Internally Displaced Persons (IDPs) in this country is almost becoming a business venture for some people. It will be important that this Petition begins the process of closure on the matter of IDPs and compensation in this country because it is common knowledge that there are a lot of people, not even mentioning communities, who have coalesced and formed groups whose business has just been to move from one camp to another, seeking compensation.

As a matter of urgency, it will be important to have a clear list of exactly who the IDPs are. This country needs to know how much money the Government has spent on resettlement of IDPs, which camps of genuine IDPs exist today and when will those camps be closed, so that we move on as a country.

I support.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir for allowing me to comment on the issues of IDPs. This is a matter that disturbs the core of human beings and the ability to make a living.

I concur with my colleagues who have said that it is now becoming a business. There is a lot of unemployment in this country. So, people find it easy to move from rural

to urban areas and when we fight politically, they claim they were displaced from their homes.

In Kibra, the people who are genuine IDPs are the--- I do not know the ethnic group. Those are the people who have been living there for more than 30 years.

**The Senate Majority Leader** (Sen. Murkomen): The Nubians.

**Sen. Olekina:** Thank you, Senate Majority Leader. Those are the genuine IDPs.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You have received information unprocedurally. So, do not disclose the source of the information.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, the Senate Majority Leader should seek for an opportunity to give information on a point of information.

The people I know are genuine IDPs are the Nubians in Kibra. Anyone else who leaves his or her home and migrates to this beautiful Nairobi City to look for a job takes advantage of any skirmishes in this country.

This Petition is timely because it gives us an opportunity to identify who a genuine IDP is. If we talk about the Maasais from Baringo who were displaced from their home area, then we can justify that those are genuine IDPs because people were kicked out from their area in Makutano.

It is important for us to ensure that people in this country do not take any opportunity to make money. We should endeavour to help Kenyans and especially young people to have a future. That is why I keep on saying that the best thing for this House to do is to commit its time to fight for devolution. If we stop rural-urban migration and if we devolve more funds to rural areas, we will solve the problem.

In supporting this Petition, I encourage the committee that will be tasked to look at the matter to go and identify who the real IDPs are. They can do so by looking at the identification cards. If you were born in Olombogishi in Narok, you have no business claiming that you are an IDP.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator, be brief and focused.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, I stand to support this Petition because it touches on people's lives. However, we also need to know the people who take advantage of every situation. As Sen. Olekina said, they find opportunity in everything.

The committee that will be set up should come up with proper investigations and tell us the genuine people and guide this nation. Investigations have been done in the past but the credibility and genuineness of our reports have always been questioned.

The committee tasked should give this Petition the proper attention that it deserves, so that the report that will come will be a true report which will portray what is happening on the ground. There are people who have suffered and we need to pay attention to that, so that those who are genuine and they are suffering do not continue suffering. However, we also need to deal with those who are not genuine because that has been happening.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I salute the residents of Kibra who have brought the Petition. Whichever committee you will send this Petition to should probably broaden the approach and try to bring the whole saga of IDPs in this country to an end.

Last year, the Government issued a statement that they were paying the last batches of IDPs who were allocated land somewhere in the rift valley and that there were not going to be anymore payments or any IDP claims.

You may recall, on the Floor of this House, it was said that Kshs25 billion had been spent ostensibly to settle IDPs. However, it appears that the management, identification, payment and anything to do with IDPs has become a gravy train. We have fake IDPs and phony claims. The Government owned up and said that there are people who are paid to leave the camps but they go back and erect structures made of polythene sheets and cartons and claim to be IDPs.

We cannot be a country where every other day we play the same song like a stuck gramophone record. We must resolve this. This gives this House – as the defender and protector of counties, their people and their governments – an opportunity to deal not only with matters of Kibra but also the matters of Mau Forest, the IDPs of Mt. Elgon, Trans Nzoia, the Coast, Embobut Forest and everywhere.

As I finish, history tells us that when you give the IDPs or the so-called IDPs money, you are not solving a problem. If it is settling people, the Government should identify land, buy and demarcate it, create title deeds and settle people, so that those who will dispose of the land and go and erect polythene papers and cardboards around markets can be dealt with in accordance with the law.

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I rise to make my brief comments about the Petition. I am a little concerned about this Petition and especially the question of 90,000 IDPs. From my own understanding, IDPs are people who were moved from their existing occupation or land that they used to occupy. If 90,000 people were moved from Kibra, there could have been a crisis and where did they go?

Secondly, there is a possibility that although this Petition is restricted to Kibra, you are going to open a Pandora's Box. This is because land was purchased in areas like Rongai in Nakuru County and the IDPs were not allocated that land.

Thirdly, my concern is what happened to the land where these people were displaced from? Where did this land go and to who? The concern in this Petition and money that the Government has utilized, so far, in my own view, will expose yet another scandal of people who have been paid either twice, thrice or people who were not displaced. I am aware of people who went back to their homes in various places in the country, but still benefited from this money.

Mr. Deputy Speaker, Sir, as I said, this Petition will expose many issues that we should not expose.

Finally, you must be prepared---

**Sen. Malalah:** Why?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Malalah! This is the Senate of the Republic of Kenya.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, as you interrogate displacement, the Committee must be prepared to open old wounds. That is what I am talking about.

**Sen. Malalah:** On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Mutula Kilonzo Jnr. in order to say that we should not expose the rot that is in our society?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, that the imagination that the Senate cannot expose the rot. Our mandate is to ensure that we expose the rot in this country. That is the spirit of this Petition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Under what Standing Order are you rising to make your comments?

*(Laughter)*

Sen. Mutula Kilonzo Jnr., do you want to respond?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, there is a misrepresentation on my part. What I am simply saying is that the exposure of corruption and displacement might also expose the wounds that we want to heal. These are the wounds about tribal clashes, alienation and movement of people. That is something that we must be prepared to deal with. We cannot deal with the compensation and fail to deal with why people were moved from their ancestral homes. That is a concern.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I will allow three more comments.

Sen. (Dr.) Musuruve followed by Sen. Kinyua and, finally, Sen. Sakaja.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir for giving me this opportunity to add my voice to this Petition. I want to commend the people of Kibra Constituency for coming up with this Petition.

The issue of IDP is an issue that we cannot ignore. I support my fellow Senators who have asserted that there is need to intervene and see how they can be resettled. However, in as much as we feel there is need to resettle the IDPs, there is need also to identify who exactly are the genuine IDPs and who are the brokers. In such a situation, we also find that there are many brokers who will come in the name of IDPs. There is need for them to be settled. However, the Committee should be hawk-eyed and ensure only genuine IDPs are resettled.

Mr. Deputy Speaker, Sir, I can imagine their pain and I feel for the IDP families. I can also feel the psychological trauma that they are going through because of the displacement. Therefore, there is need to intervene with speed and ensure that we settle them. After they are settled, they will affirm that the Senate intervened to sort out their issue. We were elected to serve our people. We must ensure that we reach out to them and sort out their issue.

Further, the issue of psychological trauma also has to be dealt with, with utmost speed. If we do not do so, children will continue to suffer and they will not perform well in schools and eventually they will be a burden to the society. Our core business is to ensure that we come up with leaders who can lead this country. We can also have children from the IDPS who can lead this country. If we intervene on this issue, the children will remember us and they will be great leaders in this nation.

I beg to support this Petition in all ways.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Kinyua, make it brief and to the point.

**Sen. Kinyua:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. Foremost, I want to thank Rev. David Muganda for bringing this Petition. As much as we are concentrating on the issue of Kibra Constituency, I would like to bring to the attention of the Committee that there are many displaced people who are suffering in this country. They were promised to be given some money, but today, they have never been compensated.

There are many IDPs suffering in Rift Valley where I come from. They do not have good medical care and are living in makeshift structures. However, there are people who pretend to be IDPs whenever they hear the Government wants to compensate the genuine IDPs. If you go to Solio, Rimuruti and Marmanes in Laikipia County, you will see how genuine IDPs are suffering. I, therefore, recommend to the Committee not to zero in on Kibra only, but they should put more effort and extend this to any other area that was affected.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I had already closed further requests because this is a Petition, not a Motion.

Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir, for your kind indulgence. I did not request earlier because I had not seen the facts. I have managed to go through the Petition. In as much as we must acknowledge that every Kenyan has a right to petition this Parliament on any matter that is of concern to them within our authority. However, the matter of IDPs is a matter that cannot be spoken about forever in this country.

When many of the IDPs of 2007/2008 were resettled and were paid during the first and second times, we saw cases of fraudulent Identification Cards (IDs). I remember a case where some were asked to point out where their houses used to be and they said because of trauma, they could not identify their former farms. They were not IDPs.

Mr. Deputy Speaker, Sir, the population of Kibra Constituency is 178,000. If 90,000 people were displaced from Kibra which is more than half of the Constituency, it would be noticeable throughout the country. So, even as we admit it and we listen to them, let us use the opportunity to put a final end to the issue of IDPs and displacement. Also, let us set a standard in this House when petitions come, to do some little verification and accuracy. If I got a petition saying 1.9 million IDPs were displaced, no one would take it seriously. In the same manner, it is common knowledge that the population of Kibra Constituency has been 178,000 since 2008. There is no way half of the constituency consists of IDPs who left Kibra Constituency.

We would be glad to participate in the Committee when they go through this so that those who actually are deserving cases are looked at, together with those who are integrated.

**The Deputy Speaker**(Sen. (Prof.) Kindiki): Sen. Outa, I will give you one minute and Sen. (Eng.) Maina will also have one minute after that.

**Sen. Outa:** Thank you Mr. Deputy Speaker, Sir. I also want to thank the people of Kibera. I am a member of Kibera because I run a school opposite Olympic Primary

School called the Spurgeons Academy that hosts a number of the Internally Displaced Person (IDP's) who the Government promised to give some support but has not yet done so. My school is now overwhelmed by extension, getting some of the kids to settle in the school. That is why we want to appeal to this Government -f or there is peace now -to look into this matter of Kibera and get the genuine people to be resettled for they have suffered.

This is not only in Kibera, in Kisumu, we call them---

**The Deputy Speaker**(Sen. (Prof.) Kindiki): Order Sen. Outa! Could we hear from Sen. (Eng.) Maina?

**Sen. (Eng.) Maina:** Thank you Mr. Deputy Speaker, Sir. I rise to support this Petition because this is a matter that is now alive in this country and that is corruption. I say so because the Petitioner has said that some people have been left out. If they were genuine people, it means that they were left out because of the things that we are trying to fight. We should take this opportunity to correct this situation.

Let us not forget that there are many families in Naivasha who have been living miserably. When this is being looked into, I would expect that a recommendation or proposal be made for people like those who are in Kibera to be handled properly.

**The Deputy Speaker**(Sen. (Prof.) Kindiki): Thank you, Senators. Pursuant to Standing Order No. 226(1), the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration.

In terms of Standing Order No. 226(2), the Committee is required in not more than 60 days from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the table of the Senate.

*(The Clerk-at-the Table read out the next Order)*

Order! You should wait for the Speaker to say; "next Order".

*(Laughter)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM PRECIOUS BLOOD  
SECONDARY SCHOOL, RIRUTA

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have a short communication to make.

I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Precious Blood Secondary School, Riruta, Nairobi County. In our usual tradition of receiving and welcoming visiting visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I will allow one or two comments. I will start with the Senator for Nairobi County, Sen. Sakaja.

**Sen. Sakaja:** Thank you Mr. Deputy Speaker, Sir. You are very kind to me today.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator, there is no kindness here.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, no one has used the prefix that is prohibited in the House. I want to join you in appreciating the presence of Precious Blood Secondary School, Riruta. This is one of the schools that we are very proud of in Nairobi County. It is a school that I have been very close to since my days in school. It was our sister school when I was in the great school that I know you also went to.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator, you were not in a girls' school.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, it was our sister school. I will not attempt to do what Sen. M. Kajwang' did in Mombasa but when I say that it was our sister school, I mean that they were the sisters and we were the brothers. The school that I am talking about is the great Lenana School.

Precious Blood Secondary School, Riruta, has set the trail and it is a shining example of academic excellence and discipline and I am glad to note that one of the teachers with them, Mrs. Oyugi, has been there for many years and was even there when I was in Lenana School. I want to encourage them to keep on shining and making us proud. I look forward to coming to visit you soon.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. Sakaja. As you are aware, we will not spend so much time on this. I see so many requests and that means that Precious Blood Secondary School, Riruta, is a great school, hence the interest. We are very happy that they are here but I request that we give the chance to a few more Senators then we will proceed to the other Business in the Order Paper.

I am afraid that many of you will not be able to talk. I will allow Sen. Shiyonga to contribute and I will give her two minutes.

**Sen. Shiyonga:** Thank you Mr. Deputy Speaker, Sir, for allowing me to contribute. I want to join you in welcoming the Precious Blood Secondary School, Riruta. It is one of the schools that we recognize and it has the best academic results. I was once a parent there.

*(Loud Consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senators.

**Sen. Shiyonga:** It is a school that is recognized for its excellence in academics. I want to join you in welcoming them.

Regarding the Motion of---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator.

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, I welcome the students and teachers of Precious Blood Secondary School, Riruta.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

**Sen. Were:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to welcome Precious Blood Secondary School, Riruta to the Senate.



*(Sen. Malalah consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Malalah! You seem to be the center of---

*(Laughter)*

Proceed Sen. Were.

**Sen. Were:** Thank you Mr. Deputy Speaker, Sir. I would like to join the Senate in welcoming students and teachers of Precious Blood Secondary School, Riruta to the Senate and wish them well in the business that they have come to conduct here. I also rise as a member of their Board of Management and I know that they are great girls who are doing this country proud. We expect the best results this year and, in the years, to come because that is what Precious Blood Secondary School, Riruta stands for.

Welcome girls.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. Were. Make it brief, straightforward and restricted to welcoming the visitors.

Senator Naomi, it is not an opportunity to say---

*(Sen. (Rev.) Waqo stood up)*

I am talking of another Naomi. It is not an opportunity to talk about everything that you have suddenly remembered.

**Sen. Linturi:** Thank you, Mr. Deputy Speaker, Sir. I also want to welcome students from Precious Blood High School, Riruta, in the Senate. I had a personal engagement with them when I was on my way to this Senate Chamber. I told them that if it is to be, it is up to them; they have the control of their destiny. So welcome, girls. We are proud of you, and I am sure you can do better than you have been doing.

Thank you.

*(Applause)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. Linturi. I will allow a few more Members. Now I give the Floor to Sen. (Rev.) Naomi Waqo.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir, I rise to welcome the students from Precious Blood Secondary School, Riruta together with their teachers. We are proud of you and as a woman Leader, I want to encourage each one of you to work hard so that you can help this nation to grow.

I come from a pastoralist community where we talk of hyenas everywhere. There are so many hyenas outside there and even within. So, we pray that the teachers protect the girls ---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! Sen. (Rev.) Naomi, you are protected by the Chairperson, but to the extend of saying the right things.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir. I used the word “hyena” because I am familiar with it. I am just requesting ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! I have already guided, Sen. Waqo on how to conclude her comments. Underline the word “conclude”.

**Sen. (Rev.) Waqo:** I am requesting the teachers and other members of the school staff to protect the students from any danger from within and without.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Rev.) Naomi Waqo. It is true our girls are being attacked in schools. Therefore, we need to protect our children who are our future.

Finally, Sen. Ledama Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, I rise to welcome the young girls from Precious Blood High School, Riruta. I want to encourage them to take cue from what we are doing here, fighting for this country. Also, to learn that we, indeed can be their mentors. Do not let anyone tell you that you cannot be what you want to be in life. So, I encourage you to take this time to learn. You do not need to be born in wealthy families for you to be a millionaire in this country. If you really believe in what you are doing, you will achieve it.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The level of interest on this matter is too high. I will ask the Senate Leader of Majority to say one thing on behalf of those who have not spoken.

**The Senate Leader of Majority** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I welcome the young beautiful girls from Precious Blood High School, Riruta. I had an opportunity to speak to them before we I came to the Senate Chamber with Sen. Mutula Kilonzo Jnr. and Sen. Issa Boy. They are an intelligent and exciting group. I promised, and so did, Sen. Mutula Kilonzo Jnr. that we will create an opportunity to visit them in their school and perhaps inspire them by talking to them. One of the things I like is when I am in the presence of young people, I talk to and inspire them.

There was a time when I was a law student at the University of Nairobi – this is to encourage the girls – I used to come to the National Assembly Chamber to watch debates. I used to admire the likes of Sen. Orenge and Prof. Anyang-Nyong’o debating. Little did I know that one day I will be here, in this Chamber, with Sen. Orenge and Prof. Anyang-Nyong’o, among others. So, we should not be surprised, some of my colleagues will be with some of these students in this Chamber.

This opportunity for them is an inspiration and they must continue to work hard. Certainly, there are “Mafisi” out there like Sen. (Rev.) Naomi Waqo said. Our children need a protective cover around them from all the leadership, their teachers in school and from themselves. They must take care of themselves.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order!

**PAPERS LAID**

REPORT ON DIVISION OF REVENUE (AMENDMENT) BILL

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate, today, Wednesday, 6<sup>th</sup> June, 2018: -

The report of the Standing Committee on Finance and Budget on the Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018).

Thank you.

*(Sen. Mutula Kilonzo Jnr. laid the document on the Table)*

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I beg to lay the following paper---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You cannot lay a paper from where you are.

*(Laughter)*

Sen. (Dr.) Langat, there is only one table in this House; there are no other tables.

*(Sen. Langat walked to the Dispatch Box)*

So, lay the paper now.

REPORT ON PETITION: IMPLEMENTATION OF THE 2013 – 2017  
CBA FOR UNIVERSITIES ACADEMIC STAFF

**Sen. (Dr.) Langat:** Sorry, Mr. Speaker, Sir, I was misled by the Members who were in front of me. They told me I can lay the papers from where I was. Now I have learnt.

Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate, today, Wednesday, 6<sup>th</sup> June, 2018: -

The report of the Standing Committee on Education on the Petition by the University Academic Staff Union (UASU) on 2013/2017 Collective Bargaining Agreement (CBA).

Thank you.

*(Sen Langat. laid the document on the Table)*

ANNUAL REPORT ON THE OFFICE OF THE  
AUDITOR-GENERAL

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. On a light note, Sen.(Dr.) Langat cannot feign ignorance here and blame the clerks. He has been here long enough.

Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate, today, Wednesday, 6<sup>th</sup> June, 2018: -

The Annual Report of the Office of the Auditor-General for the Financial Year 2016/2017.

This is impressive; we have this report in good time.

REPORT OF KIPRA ON SOCIAL COHESION INDEX

Report of the Kenya Institute of Public Research Analysis (KIPRA) Publications on measuring social cohesion index implication of trade facilitation on foreign direct investment in Kenya, inequality in health care service delivery in Kenya and harnessing Kenya's demographic dividend.

Thank you.

*(Sen. Murkomen laid the documents on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order.

NOTICES OF MOTIONS

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Please, use the Dispatch Box. You cannot give a notice of Motion from where you are.

**Sen. Kasanga:** Sorry, Mr. Deputy Speaker, Sir, I did not realise that I could not do it from where I was seated. Can I just say something to the girls from Precious Blood Secondary School, Riruta?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, you cannot, but maybe, in future.

*(Laughter)*

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, AWARE that Article 43(1) (f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b) provides that every child has the right to free and compulsory basic education;

ALSO, AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

COGNISANT ---

**Sen. Malalah:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order, Sen. Malalah?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, the code of conduct of this House is very clear; that the dress code must be decent. The hon. Senator is not wearing shoes and she is giving a notice of Motion. I think we should look into that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order!

Sen. Kasanga---

**Sen. Kasanga:** I am sorry, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Kasanga, is it true that you are not wearing shoes?

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, right now I am wearing shoes.

*(Laughter)*

May I proceed?

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator!

What is it, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, when Sen. Malalah stood on a point of order, first of all, he did not point out under which Standing Order he was standing. Secondly---

*(Sen. Kasanga remained standing at the Dispatch Box)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senate Majority Leader.

Sen. Kasanga, when another Senator has the Floor, you resume your seat. If there is anything that you need to respond to, you will be called and given an opportunity to respond.

*(Sen. Kasanga resumed her seat)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, when Sen. Malalah stood on a point of order, he did not point the exact Standing Order ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have a point to make because the relevant Standing Order of this House does not say the type of shoes that one should wear or whether or not one should have a shoe.

Secondly, Sen. Malalah must tell us what he was looking at---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order, Senate Majority Leader! You are trivializing a serious issue. As you are aware, this House is guided by the Standing Orders, the Speaker's Rules when it comes to dress code, as well as customs, usages and precedence. So, we cannot afford to trivialize the issue raised by Sen. Malalah.

Sen. Kasanga, is it true that while you were giving notice of Motion, you had not put on shoes?

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I was not wearing shoes at that point---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Why?

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, it is because when you called and asked me to come here at the Dispatch Box, I had to move very fast out of respect for time. I apologise.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Resume your seat.

*(Sen. Kasanga resumed her seat)*

Hon. Senators, I encourage you once again to look at the Standing Orders and this small booklet that contains the Speaker's Rules. I want to bring to your attention particularly Rule 5 of the Speaker's Rules. It says:

"Senators are required not to enter the Chamber, lounge or dining room without being properly dressed. This means that a male Senator shall be dressed in a coat, collar, tie, long trousers, socks and shoes or service uniform, religious attire or such other decent dressing as may be approved by the Speaker from time to time. An equivalent standard shall apply in respect of women Senators."

Sen. Kasanga, whether you are at the Dispatch Box or your seat, so long as you are in the Chamber, you are supposed to be properly dressed as described. This is not a holiday camp. These rules are for our own good and dignity, so that we are respected; that we look like people who are transacting serious business. It applies to all of us, including the Speaker. You have heard of cases where Kenyans made fun about some county assemblies in the past term, where the speaker would enter the chamber while chewing gum and reading messages on the phone.

Let this matter rest there. Sen. Kasanga, you need to apologise to the House before you proceed to give your Notice of Motion.

**Sen. Kasanga:** Mr. Deputy Speaker, Sir and the general House, I deeply apologise for that; it will not happen again.

Thank you.

*(Applause)*

REMEDIES FOR CLOSURE OF SCHOOLS DUE  
TO FLOODS AND INSTANCES OF INSECURITY

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, AWARE that Article 43(1)(f) of the Constitution of Kenya provides that every person has a right to education and Article 53(1)(b) of the Constitution states that every child has the right to free and compulsory basic education;

COGNIZANT that on 5th January, 2018 during the flagging off of national delivery of core course books for schools at Cemastea Karen, His Excellency President Uhuru Kenyatta stated that his administration has focused on initiatives that ensure every Kenyan has access to quality education, so that they can acquire appropriate skills and knowledge that make our country globally competitive;

FURTHER AWARE that recently the country has suffered floods in many parts of the country leading to deaths and people being displaced and rendered homeless;

DEEPLY CONCERNED that some schools have also remained closed even after other schools reopened while others have been closed as a result of floods and instances of insecurity;

FURTHER NOTING that closure of schools due to the said floods as well as insecurity places students and pupils in those schools at a disadvantage as they are unable to access education which is their right, while some of the students in those schools are expected to sit for their national exams at the end of the year and their performance risks being negatively affected by the lost time out of school;

NOW THEREFORE, the Senate resolves that the Committee on Education investigates this matter with a view to: -

1. Identifying strategies to ensure that the affected students are able to access education as soon as possible;
2. Outlining preventative measures to ensure that more students are not affected by the floods and insecurity; and,
3. Submitting a Report to the Senate within sixty (60) days outlining the short and long term strategies, that are being put in place to ensure that schools in flood and insecurity prone areas are not affected in the future.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kasanga.

The Senate Majority Leader, you had raised an issue – because this might recur again – to the Senator for Kakamega. Rule 3 says:

“Senators are required to study and assist in enforcing the rules, regulating admission to the Chamber and also admission of visitors to the Chamber.”

Therefore, Sen. Malalah should actually be applauded for studying the rules and discharging his duty to enforce the rules with regard to wearing of shoes as part of the proper dressing by Senators.

Next, Order!

### STATEMENTS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We have a number of statements. As you are aware, the only statements allowed by the Speaker, until further notice, are statements under Standing Order No.46(2)(a), which require no more than 10 minutes per statement. I can see we have quite a number today.

So, we will just have to manage ourselves. I will strictly apply the ten minute rule and if you do it in less than ten minutes, the better. I will not allow comments because, ordinarily, you would have brought your own Statement.

Proceed, Sen. Wetangula.

### DISAPPEARANCE OF FLIGHT 5Y-CAC

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. I wish to make a Statement on an issue of general topical concern regarding the disappearance of a flight operated by SAX Airlines yesterday.

Pursuant to Standing Order No. 46(2)(a), I rise to make a Statement on an issue of general topical concern regarding the disappearance of a flight operated by the East African Safari Air Express, registration number 5Y-CAC. The aircraft departed from Kitale on Tuesday, 5<sup>th</sup> June, 2018, at 1605 Hrs destined for Nairobi carrying eight passengers and two crew members.

Mr. Deputy Speaker, Sir, since information on the missing aircraft trickled in, there has been confusion regarding the circumstances surrounding the disappearance of the aircraft. In a press statement by SAX Airlines last evening, they indicated that the last time the aircraft had contact with the Jomo Kenyatta International Airport (JKIA) Control Tower was at 1720Hrs; which is 5.20 p.m. However, a press release by the Kenya Civil Aviation Authority (KCAA) indicated that the flight was last seen on the radar at 1402 Hrs at 40 nautical miles from Nairobi. This would put it somewhere beyond Limuru and not further than Nyandarua.

Mr. Deputy Speaker, Sir, this kind of conflicting information has brought anxiety to the families of the passengers and crew on board. I am aware that the airline has opened an information centre at Weston Hotel, Nairobi. However, this has not helped the situation as no concrete details have been availed to the country and to the families of the passengers and crew. This is mainly due to the fact that the search and rescue operation has been slow and at one time, it was suspended intermittently in the course of the evening.

Mr. Deputy Speaker, Sir, I, therefore, urge the relevant authorities involved in the search and rescue operation of the missing aircraft to hasten their operations. Further, I also urge the management of the airlines to be sensitive to the families of the persons on



board and release information on time. Further, I urge the KCAA and all the agencies involved in this search and rescue operation to hasten the search. It is disheartening to suspend the search for a flight that has disappeared in a location that appears to have been narrowed down because of night fall.

With the advent in technology, I have no doubt that our military, police or whichever agencies involved must be having aircrafts with infrared capacity to track and identify the spot where this aircraft could have landed. The flight path of every aircraft is controlled by the KCAA and there is no evidence that this plane had gone off the flight path. It, therefore, becomes even easier to track the flight path and with infrared assistance, they can spot the exact spot where the flight could have come down, if that is the situation.

Equally important, Mr. Deputy Speaker, Sir, is to caution the heartless Kenyans who are the champions of fake news and who are posting all manner of things on social media. Even before we got any update, the sadists on social media were already saying “all are dead” when the search and rescue operation was going on. This is painful to those whose loved ones were on the aircraft.

I particularly know that a son of one of the major investors in Bungoma, Eldoret and Kitale called The Khetia Supermakets was on this flight. A nephew of mine whose father is a District Commissioner (DC) in Kibish, Turkana called Robinson Wafula, who works with some company in Nairobi, was on that flight. The young pilots who were piloting that flight have flown Hon. Sakaja and I to Kitale many times. When people become heartless and start sending messages that say “Rest in peace” when we are searching to rescue people who have been caught up in a sad situation such as this one, it tells us of how low our morals have descended.

Mr. Deputy Speaker, Sir, I urge the KCAA and the police to take the search seriously and put in more effort. Since the disappearance of the aircraft, I have spoken three times to the Inspector-General of Police and he has been very forthcoming in giving information and updates. I encourage that there should be no suspension of the search and rescue effort, even if there is night fall. It is now about 24 hours since the aircraft disappeared. If the passengers had serious injuries, the hope of finding and evacuating them to hospitals for treatment could be diminishing. Therefore, serious efforts must be made to find them.

Lastly, Mr. Deputy Speaker, Sir, is the whole situation of our disaster management. In this country, we seem to have abdicated disaster management to the Kenya Red Cross. Even this morning, I saw that the Kenya Red Cross was headed to Nyahururu to join the team and they ran into some recklessly driven truck. The team is now *mahututi* in some hospital. It is sad. I want this country to have a state of the art rescue and disaster management system that can help save lives.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula. I had already said that we will not have comments. However, you have saved us two minutes. So, I will allow two comments; one from the Majority Side and one from the Minority Side. I will start with Sen. Olekina, the Senate Majority Leader, and then we will move on to the next Statement.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I would like to take this opportunity to plead with Kenyans out there. When I woke up this morning, I saw a picture posted on social media confirming all the passengers of the aircraft dead. That was disheartening because one of the occupants is someone that I know. Just like Sen. Wetangula has said, I feel pain and I wonder about the families of the missing persons. I am, therefore, pleading with Kenyans out there to think before posting things on social media. It is so heartless.

Secondly, Mr. Deputy Speaker, Sir, I would also like to encourage the Government of Kenya to use any machinery they have to trace the missing plane. They should even use the military. I also plead with the people in the Aberdares to walk through the forest to see whether they can find the plane, because it is so disheartening.

With those few remarks, Mr. Deputy Speaker, Sir, I thank you.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank Sen. Wetangula for coming up with that Statement. It captures the mood of the country and the confusion that we are in, when there is such a situation. The search equipment is unable to work despite the fact that sometime last year or two years ago, KCAA advertised for good search equipment that could recognize and trace planes like the one that is lost somewhere in Kinangop.

We need to think about our aviation industry. Many of us are using air transport going to Kisumu, Kitale and Homa Bay because it is much cheaper compared to travelling by road. The same sizes of planes are flying those routes. We do not want to have a situation where we live under fear both for those who use fixed wing helicopters and so forth.

Mr. Deputy Speaker, Sir, after this incident, and once the rescue efforts have been completed, we, as citizens, must sit back and look at the sector again. We cannot just wish away and pretend that it was just one incident. It could be a pointer towards what needs to be done to protect the public.

Lastly, we still need to have rescue teams in this country to become sophisticated to the level we have seen in corruption. We have a large amount of public money that is being lost due to corruption. It means that if we were creative and serious enough, we can spend money to protect the citizens by putting in place structures and mechanisms for rescue.

It is now 24 hours down the line since this plane crashed. It has happened before. Captain Kinyanjui was found alive in Mt. Kenya more than 24 hours later after the crash. I am really praying and hoping that we will find Captain Barbara, Jean and the rest of the team alive.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen. Kwamboka. Do not exceed your ten minutes.

RISE IN THE NUMBER OF COLLAPSING BUILDINGS  
IN THE COUNTRY

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No.46(2)(a), I rise to make a statement on an issue of general topical concern regarding the rise in the number of collapsing buildings in the country.

I make this statement because a number of buildings crumbling due to structural defects, among other causes, have become rampant in the country, leaving a trail of death and destruction. People have been injured. Scores of people have been left homeless and others have lost their lives. These incidents have raised questions on whether the requisite construction standards were observed.

Mr. Deputy Speaker, Sir, a number of causes have been attributed to the collapse of buildings, including corruption, leading government officers to approve construction without requisite standards being met. Others are lack of coordination and inaction by government officers, poor workmanship, inadequate supervision, inspection and monitoring of the construction processes, use of substandard material, poor designs, and inadequate documented policies, systems and procedures governing national and country governments in addressing the issue.

There is need for immediate inspection and testing of the material and standards used in manufacture of building material. There is further need for inspection of all buildings to ascertain their sustainability for habitation. Urgent action is required to enforce building standards at all times in building environments, safety and demolition of substandard buildings so as to avoid further loss of lives, property and injuries. Further, all those found culpable should be brought to book.

I, therefore, wish to draw the attention of the Senate to this, and appeal to the national Government, in conjunction with the county governments to interrogate this situation and consider giving priority to building quality control, reinforce laws relating to standards of building, build legal capacity and strengthen the inspectorate to instill compliance with standards. They should also follow through notices once issued to the owners of the risky buildings.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen. Nyamunga.

**Sen. Nyamunga:** I am sorry, Mr. Deputy Speaker, Sir, I was not aware that it was coming on today because I have been waiting for it for the whole week.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No problem. We will use that time to give two other Senators a chance to comment on the previous statement.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I appreciate that statement from Sen. Kwamboka who is part of the Nairobi City County Delegation. The City County of Nairobi is one of the most affected by this collapsing of buildings. We have lost very many lives over the years in the city. As we mentioned yesterday, it is just a sign of impunity and corruption.

A few years ago we lost 40 people in a building collapse that was seven stories high and had been put up in five months. It was extremely painful hearing the harrowing stories when we were there. I remember a man who told me that as soon as he heard the

first tremor, he told his children to wait for him to move some of the items from the house. As soon as he stepped out, it was a pancake collapse. He lost all his children.

When that happened, I remember the President went there, together with the then Governor of Nairobi City County, Gov. Kidero and ordered that certain buildings which had been marked for demolition be brought down. The owner of that collapsed building owned another 20 in Mathare constituency. Up to date, all those building are still up. Only one has gone down, not through demolition, but it collapsed last week, making us lose more lives.

We will be bringing to this House a special Motion to create an *ad hoc* Committee that will go around and ensure that that report is implemented. There are around 300 buildings in this city that are on riverbanks and, which have been built without following the building appropriate procedures. These should be demolished forthwith no matter the political cost. There is no political cost that is greater than the life of a Kenyan.

We, as a Senate, must stand and make sure that all of those uninhabitable buildings in Nairobi are brought down in the soonest time possible. I will be looking for support from this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Make your comments very brief. It is Sen. Kwamboka's statement. I will allow not more than two minutes for Sen. Mutula Kilonzo Jnr. and one other Senator, and then we conclude.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. Nairobi is in a crisis. The building that collapsed is one floor. I am concerned because the Nairobi County Government has approved storied buildings of up to 15-16 floors in residential areas in Riara, Kileleshwa and we are not certain about their structural viability.

We have to support Sen. Sakaja in the *ad hoc* Committee; that there are people who are treating this country as if it is an animal farm. As Sen. Sakaja said yesterday, if this had incident happened in Kileleshwa, Runda and other places of opulence and leafy suburbs, there would have been hell to pay.

Since these people in Huruma and Mathare are treated as lesser mortals, it has just become a statistic. Just like Huruma, I saw a well bound report yet those families have never been compensated. As usual, the government is going to pay lip service to the deaths and they are going to be there in smart suits and very nice apologies. It is a sad situation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Finally let us have Sen. Kasanga now with shoes on.

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. Yes, with shoes on, for sure.

The issue of collapsing buildings affects the entire country. We cannot run away from the fact that we have failed a lot as leaders. Secondly, our build environment definitely needs review. Our building codes are out-dated and that is one of the things I know we are looking at as a caucus of build environment consultants. This also includes the consultants themselves where we need a further legislative regulation on who are the participants in the build environment. There is definitely a question on that.

I commend Sen. Sakaja and wait for his Motion. I hope to be in that *ad hoc* Committee because we also need budgets when it comes to demolition. The reason

condemned buildings are not demolished is because there is a cost; a cost which we hope can be covered so that this can be actualised within the shortest time possible.

There is also a question of contractors. I will be bringing a Motion on that because now we need to weed out the rogue contractors. We know there are quite a number of them. I hope to get support in the Motion because that is also an area where we need to look at critically.

For the owners of buildings, we need to see what we can do as leaders because we have to deal with this impunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The next one is by Sen. (Dr.) Musuruve. Are you ready?

RAPE CASES AMONG WOMEN WITH DISABILITIES  
IN KAKAMEGA COUNTY AND ITS ENVIRONS

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to make my Statement.

Pursuant to---

Mr. Deputy Speaker, Sir, my apologies. Let me organize myself.

I rise, pursuant to Standing Order No.46 2(a) to make a Statement on a county issue regarding the rise in the number of rape cases among women with disabilities in Kakamega County and the surrounding counties.

I make this statement because prevalence of sexual abuse against children and adults with disabilities in Kakamega County is becoming common. It is causing growing and serious concern.

Just to mention a few recent ones; there were two cases in Malava where a girl who is a pupil at Malava Special School with Down syndrome was raped on 24<sup>th</sup> May, 2018 by a 40-year old man. Another was raped severally by different men. Another case was in Matungu where a girl with mental disability had been raped and impregnated. These cases have been reported, but sadly the perpetrators have not been apprehended.

The damages caused by the physical, psychological and social consequences of rape stay with these victims for years. The immediate aftermath is that the victims endure pain from the injuries and they may even carry long-term physical and mental consequences such as pregnancy and sexually transmitted diseases, including HIV and depression.

Mr. Deputy Speaker, Sir, every person with disability has a right to be respected on an equal basis with others whether he is physical or mentally disabled. Observing that the perpetrators have not been apprehended clearly shows that these cases of rape of persons with disabilities have not been dealt with. Many of these cases have been reported, and sadly you realize that the complainants cannot afford the legal costs to pursue their cases in court. The sentences may also be lenient or not always served.

I, therefore, wish to draw the attention of the Senate to this and appeal to the national Government in conjunction with county governments to interrogate this matter so that justice permeates in our society for all victims.

Thank you,

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.  
Proceed, Sen. Mutula Kilonzo Jnr.

MEDIAL EQUIPMENT RECEIVED BY MAKUENI  
COUNTY UNDER THE MELP

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I rise to make a Statement under Standing Order 46 (2) of the Senate Standing Orders on the medical equipment received by Makueni County under the Medical Equipment Leasing Program (MELP).

The MELP commenced three years ago or thereabouts, after a protracted and noisy debate between the national Government and the Council of Governors (CoG) on behalf of the 47 counties. I have attached a schedule of medical equipment received by Makueni County. While it is appreciated that our hospitals are not equipped, this scheme was a relief to Kenyans who had to travel long distances for dialysis, X-Rays, Ultra Sounds in the case of expectant mothers and many more.

Mr. Deputy Speaker, Sir, several issues have been bothering me and I would like the Finance and Budget Committee to interrogate them in detail. In the current Division of Revenue Act, 2018, we approved a retrospective increase of the 2017/2018 budget from Kshs4.5 billion to Kshs6.1 billion and Kshs9.4 billion on the Financial Year 2018/2019. Our efforts as the Committee on Finance and Budget to interrogate the reasons behind the increments have not borne fruit.

It was understood - I stand corrected - that the scheme was for a period of seven years at a fixed sum of Kshs4.5 billion every year. It was understood that the said contract would include the cost of maintenance and repairs. From the schedule attached to this Statement, it is not clear whether spare parts are included.

In any leasing contract, the lessor does not transfer title of the goods to the lessee. The lessor should be responsible for any repairs and replacements of parts. Any fee chargeable would be on actual use and not an estimate. At the end of the leasing, the leased equipment would revert to the lessor, amongst other conditions.

The MELP is not clear on these aspects. It would benefit this Senate and the country for the Committee to conduct an audit and request for information from the relevant agencies on the following issues:-

- (a) the total cost of the MELP;
- (b) the leasing period;
- (c) a schedule of equipment delivered to each county and the status of their utilization;
- (d) the actual cost of each equipment at market rates;
- (e) the value assigned for the maintenance, repair and replacement; and;
- (f) the status of the said equipment after the leasing period.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

Finally, Sen. Farhiya, proceed on behalf of the Chairperson of the Committee on Delegated Legislation.

ACTIVITIES OF THE SESSIONAL COMMITTEE  
ON DELEGATED LEGISLATION

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir.

I rise under Standing Order 46 2(d) to make a statement relating to the activities of the Sessional Committee on Delegated Legislation.

Pursuant to Standing Order 215 of the Senate Standing Orders and Section 12 of the Statutory Instruments Act, 2013, the Sessional Committee on Delegated Legislation is mandated to scrutinize all statutory documents laid before the Senate.

During one of the sittings of the Committee held on Wednesday 14<sup>th</sup> March, 2018, the Committee was informed that there was the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No. 44 of 2017) sponsored by the National Assembly Majority Leader. The Bill contained an amendment to the Statutory Instruments Act to ensure that the statutory instruments are submitted to the relevant House of Parliament. The Committee noted this and resolved to wait for the Bill to be transmitted to the Senate.

On Thursday 29<sup>th</sup> March, 2018, the said Bill was considered by the National Assembly and further amendments on the Statutory Instruments Act were moved by the Chairperson of the Committee on Delegated Legislation including an amendment pertaining to submission of statutory instruments to Parliament, directing the regulation making bodies to submit copies of all statutory instruments for tabling before the National Assembly. The amendments were adopted by the Assembly.

Mr. Deputy Speaker, Sir, the Bill was passed by the National Assembly on 29<sup>th</sup> March, 2018 and assented to by His Excellency the President on 4<sup>th</sup> April, 2018 without referral to the Senate. As a Committee, we felt that this is a matter that should be brought to the attention of the Senate. This is because the Bill was never transmitted to the Senate for concurrence, yet consideration of statutory instruments is also undertaken by the Senate and numerous statutory instruments affect the functions of the counties as stipulated under the Fourth Schedule of the Constitution.

The National Assembly has acted in bad faith to consider a Bill that affects the functions of the Senate, and in essence affects counties without referring the same for concurrence by the Senate. If we, as the Senate, allow this matter to pass without mention, we will be abdicating our legislative making powers and faith in our constitutional role of protecting the interest of counties, pursuant to Article 96 (1) of the Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, given the unique aspects of that last statement, I will allow a few comments. However, I ask Senators to state the issues. I will allow four comments from both sides of the House starting with the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank the Senator for raising this important issue on behalf of the Committee on Delegated Legislation. I thank Sen. Poghisi who is the Chairperson and the Vice Chair therein for doing a very good job to point out these issues. These issues are within our

knowledge. As I said in Mombasa, I would like to disclose here that I wrote to His Excellency the President in regard to various legislations including the Miscellaneous (Amendments) Bill which had so many laws apart from this one that concern counties.

There is a very growing and dangerous practice that has been there in the National Assembly for a while in relation to ignoring this House in its legislative mandate. It is baffling to even point out that it is one of the many. In the same institutional amendment, you will find out that the Senate was denied the opportunity to deal with matters concerning the environment which were in the Bill, among others, including the Salaries and Remuneration Commission which is an entity that deals with the national and county governments including, the Senate itself.

Mr. Deputy Speaker, Sir, there are many ways of solving this problem. The number one way is whether the President will agree with our position. Unfortunately, the Bill has been signed. That means that it can be republished as a Cabinet directive for amendments so that it can then start from the Senate or the National Assembly, to correct the anomaly.

I say this because, if we continue with this tradition where Bills that outrightly concern the functions of county governments are not coming to this House, then nothing stops county governments from disobeying those laws and arguing that it is Parliament and the President who agreed that those Bills do not concern counties. Therefore there will be no reason for them to obey that which does not concern them and has been agreed upon by both Houses that it does not concern them.

Secondly, there is a real possibility that more than 100 Bills that have been signed by the President in the last six years can easily be declared unconstitutional. That would lead us to a serious problem because some of those Bills touch on very serious areas in terms of governance of the country. The President had requested that we meet the leadership of the National Assembly and the Senate.

Some people will ask here, why the President? That is an important question. I will explain if you give me two minutes. It is the President not just by virtue of being the President of Kenya and his office. It is because it is his constitutional responsibility to assent to Bills. Before assenting to those Bills, it is also his constitutional responsibility to check whether those Bills have been passed accordingly and whether they have gone through the two Houses and if they met the constitutional threshold.

Mr. Deputy Speaker, Sir, I also had a conversation with the Attorney General about the behaviour where the Speaker of the National Assembly and the Majority Leader of one House rush to the President with the Bills and get them assented to one morning---. This is a dangerous behaviour because it can put the President into embarrassment. His duty as the principal advisor of the President is to check those Bills first and tell the President that now that Parliament has done its part and that he can sign them. However, when we rush Bills either from this House or the National Assembly straight to the Presidency without sending them in good time to the Attorney General to look at them, we find ourselves in this legal quagmire.

Since the President is out of the country and he had requested us to have a meeting this week before his diary became busy, I request this House to give me another two weeks. Sen. Mutula Kilonzo Jnr., Sen. Olekina, among others who sit in the Senate



Business Committee, know that we have debated these issues over and over again in our meetings. If we can be given two weeks, I will come back to this House with a statement similar to the one that has been made by the hon. Senator on what progress we have made on that important matter. If it becomes impossible to agree with my counterpart, because I met somebody who asked me why I wrote to the President and that it was possibly not me who wrote the letter and that I must have been assisted by a certain officer because they wanted to accuse that officer---

Mr. Deputy Speaker, Sir, I have three degrees in law. I have three degrees in law from reputable universities in the world. One must not second guess the importance of that education. One must also not start imagining that because we are legislators, we stopped reasoning.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! The Senate Majority Leader, is it your view that if you have three degrees, you cannot be assisted by an officer?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the idea that you can always accuse other officers or staff because you have a problem with them on a position that I have personally taken and written to the President and signed--. The officers can assist me. I could request them to type for me, give me further ideas or research on an issue. However, the responsibility is mine. It is my letter and that is my position. I believe that these things must be done in a diplomatic way, thus the reason I wrote to the President without copying anyone else. I did not even copy myself because I wanted it to be done in a manner that will bring to an end all these issues.

In two weeks, I believe that we will have come with a position. The President and the Attorney General also have a right to disagree with me. If they both disagree with me, we will go to the constitutional arbiter to make a determination on whether this House should continue proceeding by being locked out on two things. One, that one person declares what does not concern counties despite the fact that the Supreme Court said that when there is a disagreement between the two Speakers on what concerns and does not concern counties, they should go through a prepublication mediation process to agree on whether that Bill concerns counties.

Mr. Deputy Speaker, Sir, secondly, there has been something being hidden around money Bill. Once that process of; “does it concern counties” has been achieved by the two Speakers, no one Speaker can wake up one morning and say that the Bill is a money Bill because that decision is made before that Bill is published as a Bill concerning counties or not concerning counties.

The Constitution is very clear. The fact that a Bill has a few sections that relate to money does not make it a money Bill. It can only be a money Bill if the whole Bill from the first to the last clause is about money. If anything else is introduced into the Bill, the Constitution says that it ceases to be a money Bill.

We are a serious House here with a Professor of Law sitting as the Deputy Speaker. We are a serious House with three Senior Counsel; the Senator for Nyamira County, the Senator for Busia County and the Senator for Siaya County. We also have serious litigators and lawyers here like Sen. Mutula Kilonzo Jnr., Sen. Faki and many other Senators who are lawyers in this House. All the Senators who are lawyers in this House have a renown reputation by virtue of their practice in Law.

Our responsibility is clear; when we advise the country, State and Parliament, we are not doing it for personal gain. Some of us like Sen. Sakaja, Sen. Outa among others were in the National Assembly. We are here today and there the next day. Therefore, as custodians and protectors of the Constitution, we must be true to that. I am not going to allow the 12<sup>th</sup> Parliament to suffer the consequences that we suffered in the 11<sup>th</sup> Parliament. We must correct these anomalies.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Murkomen, welcome to the office of the Senate Majority Leader.

*(Sen. Murkomen spoke off record)*

Now, the interest is high and time is not on our side.

Sen. Pareno, You have two minutes.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Statement by my sister Senator, who is the Vice Chairperson of the Committee on Delegated Legislation. As Members of this Committee, we are really disturbed. Every time we try to perform our duties somebody somewhere either tries to erode the mandate that has been given to us, or out of impunity, tries to make us irrelevant.

Today, as a Committee, we decided that we will not keep quiet about this. Immediately after our sitting this morning we actually walked to the Clerk's office, because we were aware that we could not see the Speaker at that moment. We went there as a whole Committee and brought it to the attention of the Clerk that we wanted to state today that we are not happy with this particular amendments and several acts of impunity by the National Assembly of passing Bills that try to erode our mandate.

If we do not arrest this situation at this particular time, we might as well close shop, especially when it comes to the Committee on Delegated Legislation. What the National Assembly has passed actually tries to erode and make us irrelevant and not be able to work. As a Committee we say "no". That is why we felt that we should bring this to the attention of the House.

Mr. Deputy Speaker, Sir, in that Committee we have five lawyers out of the nine Members that we have. We will give our free service to go to court in case this will not be dealt with. We were told that there was such a debate again in the previous Parliament and the Members of the Senate were divided. This time we will lobby all our Members and I am happy that the Senate Majority Leader is here. That is the information we were given as a Committee this morning.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point order, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, is it in order for Sen. Pareno to mislead the House that there was division in this House in the last Parliament when we wanted to go to court? The reality is that, as the Senate Majority Leader by then, you led all of us plus the Speaker to go to the Supreme Court. That is why this House now considers the Division of Revenue Bill, the County Allocation

Revenue Bill and many other Bills, as was directed by the Supreme Court. Is she in order?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Pareno, what do you have to say?

**Sen. Pareno:** Mr. Deputy Speaker, Sir, the information we were given this morning as a Committee is that there was a resolution which was passed by this House that allowed the Clerk to facilitate a movement to the courts to defend this particular anomalies that are coming up. We were informed that, in fact, that was not realised because Members at that particular time were divided. So, if I was misled, that is the information I was given.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You are out of order. The Chair has information about that matter. There has never been any division when it comes to protecting the interests and rights of this House.

You have 10 seconds to wind up if you have not done so already.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I stand guided. We are ready to go to court again if that is what will bring order and make the National Assembly respect that we also have a stake.

Finally, we will enforce Section 11(4) of the Statutory Instruments Act that says:-

*(Sen. Pareno microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have 30 seconds to finish that sentence.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, it says:-

“If a copy of a statutory instrument that is required to be laid before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.”

We will write to the authorities that have such instruments and say that they are void as long as they have not been tabled before the Senate. We need your help for us to realise our mandate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I will give two other Senators to comment, but they have to wait for a while.

*(Interruption of Statements)*

## COMMUNICATION FROM THE CHAIR

### VISITING DELEGATION FROM KANGA BOYS HIGH SCHOOL, MIGORI COUNTY

Hon. Senators, I have a Communication to make. I wish to recognise the presence of visiting students and teachers from Kanga Boys High School in Migori County. They are seated at the Public Gallery.

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In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

*(Applause)*

Before we conclude the comments on that Statement, in which case, I will allow Sen. Omogeni to give the last comments on that--- Sen. Omogeni had already requested and so had Sen. M. Kajwang’.

*(Sen. M. Kajwang’ spoke off record)*

Order, Sen. M. Kajwang’.

Before that, we have visitors in the Gallery. I cannot see the Senator for Migori County, but I can see the neighbour, the Senator for Kisumu County. You can say a word or two on behalf of the rest of us.

**Sen. Outa:** Thank you, Mr. Deputy Speaker, Sir. I want to welcome to the Senate students and teachers from Kanga High School. I want to also let the Senate know that the Senator for Migori County has not been feeling well. He has been in and out of the hospital and currently, he is at the MP Shah Hospital.

Let us continue to pray for our dear Senator together with the family. I want to tell students and teachers from Kanga Boys High School that your Senator will be well. We are praying for him and we love him. He is a great person and I know he would have wished to be here, but he is sick. As you go back, tell the people of Migori County that he will be well.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senator.

There is another neighbour; Sen. M. Kajwang’, the Senator for Homa Bay County.

**Sen. M. Kajwang’:** Thank you, Mr. Deputy Speaker, Sir. I am glad that I caught your eye on this opportunity. I wish to join you in welcoming the boys from Kanga Boys High School. This is a citadel of academic excellence not just in Nyanza, but in Kenya as a whole. It has produced a lot of people who have ended up in this House. In the ‘Lower’ House, there are a huge number of people who came out of Kanga Boys High School.

I just want to encourage the boys to continue aspiring and excelling the way they have done in the past. We have noted that their performance could have gone down as opposed to the past, but we want to encourage them because we believe that they have what it takes. What Sen. Outa did not mention is that even though Sen. Okello is not in this Chamber today, he has evenly distributed his duties between the Senator for Kisumu and the Senator for Homa Bay County. So, the interests of Migori County shall be well taken care of in this House.

Mr. Deputy Speaker, Sir, once again, let me congratulate the boys for maintaining very high standards of discipline; not just academic but discipline and moral standings.

May God guide them and we hope that in future, some of them will be sitting in this House and some of them will be sitting on the chair that the Speaker is sitting on today.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Sen. M. Kajwang’.

Finally, even though the Senator for Makueni County is not a neighbour, but you can say something for the rest of the Senators who are not from neighbouring counties.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, the only reason I requested you to allow me to speak is that I went for a function in Migori and the school administration allowed me to speak to the students. I was amazed. The rate of students going to the university at the time was 97 per cent although the principal at the time complained that because they became a national school it moved to 92 per cent; it was still amazing. After speaking to them, I am glad to say that one student by the name Justice Okumu then decided to become a lawyer and is now at Parklands.

Therefore, in terms of what Sen. Kajwang’ has said, citadel of excellence on discipline, Kanga High School is one such place. I am glad they have come to the Senate. I congratulate them for the discipline that they have. I was glad to find a very huge dormitory called Kalonzo Musyoka constructed by my party leader when he was a Minister for Education. It is a very nice place.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Sen. Omogeni you have two minutes on the earlier statement. Keep it two minutes.

*(Resumption of statements)*

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, first allow me to also join my other colleagues in welcoming the boys from Kanga High School. I schooled in the former South Nyanza. This used to be our neighbouring school. It produces very outstanding students. So, I also welcome and wish them in their academic endeavours.

I would like to make some few remarks on the statement that was issued by my vice Chair in the Committee on Delegated Legislation. I could have wished to get more time to pour my emotions on this very ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Omogeni! We do not pour emotions here. We debate issue very soberly and objectively. I will add you one more minute as a Member of that Committee. So, you have three minutes starting now.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir. First, I agree with the statement that was issued by the Vice Chair. Clearly there seems to be some mischief and bad faith from our brothers in the National Assembly. The amendment that was done to the Statutory Instruments Act clearly is intended to water down any role that the Senate should play on any consideration on regulations that ordinarily affect the functions of county government. It is really meant to reduce the constitutional mandate of the Senate.

I join the concerns that were raised by the Majority Leader. If the Senate does not treat this matter with the urgency that it requires, then slowly by slowly, this House will be rendered almost irrelevant.

I would like to draw the attention of this House that the role of the Senate has received support from no other constitutional office but the Supreme Court of Kenya. In

an advisory opinion, No.2 of 2013, the Supreme Court had an opportunity to consider what Article 110 means when it talks of bills that affect the functions and powers of county governments.

In paragraph 102 of that decision, the Supreme Court placed a lot of responsibility on the Office of the Speaker. At paragraph 102, the Supreme Court hailed that with a good Speaker, the Senate should find something that affects the functions of counties in almost every Bill that is processed by Parliament.

Therefore, I do not understand the wisdom of the National Assembly when they want to lock out the Senate from considering legislations that ordinarily affect the counties and the functions of the county governments.

If we, as a Senate, want to have good presence in our functions then each ---

*(The red timer went on)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Kajwang’.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I congratulate the Committee on Delegated Legislation for bringing this statement. Parliament represents the will of the people. That is what the Constitution says. There are those who argue that, that will can be represented in the National Assembly or the Senate.

Therefore, it is not that we are crying that we do not want the National Assembly to do certain things. In fact, if they take the lead in representing the will of the people, so be it. Article 110(3) obliges the Speaker of the National Assembly to have a conversation on each and every Bill before it is introduced to the House. If this is not happening because the word there is “shall” then we need to ask the Speakers why they are not fulfilling the requirements of the Constitution.

The Cyber Crime Bill which has now been signed into law originated from the National Assembly and went for presidential assent. The courts of law are already declaring certain parts of it as being defective and unconstitutional. That is a value that the Senate would add by offering a second opinion and view on Bills that come from the National Assembly.

Secondly, on the functions of the Committee on Delegated Legislation, a lot of their powers derive from the Statutory Instruments Act. I challenge the membership of this Committee that it is not enough to complain about the changes coming from the National Assembly. I encourage Sen. Pareno, the Chair and the leadership of this Committee, why can we not also propose the amendments that we need on the Statutory Instruments Act, then let us have two sets of amendments coming from both Houses that will end up in mediation as is required by the law.

Mr. Deputy Speaker, Sir, Sen. Pareno is trying to inform me but she has not caught your attention. So, let me go on until she does that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Pareno?

**Sen. Pareno:** On a point of information, Mr. Deputy Speaker, Sir. I would like to inform Sen. Kajwang’ that the Committee has already drafted proposed amendments to actualize their mandate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kajwang', you have one more minute.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I take that point of information very positively because the current Act says that the National Assembly is a mandatory recipient of all regulations but the Senate is not. So, this Committee must also help us to ensure that we have a good footage.

Finally, as a nation we chose bicameralism. Bicameralism is like polygamy. We chose to have two Houses of Parliament. It is like choosing to have two wives. You have to live with it. The problems between us and the National Assembly will not go away on their own. It requires some soberness and reflection for us to harmonise and iron out some of these inconsistencies. Let this Parliament not be known for the fights between the two Houses. Let it be known for having come up with right framework that entrenched bicameralism in this country.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kajwang'. If bicameralism is like polygamy, it is also like polyandry, especially, in these days of gender equality.

Very well. Next order!

## BILL

### *Second Reading*

#### THE COUNTY BOUNDARIES BILL (SENATE BILLS NO.6 OF 2017)

*(Sen. Mutula Kilonzo Jnr. on 1.3.2018)*

*(Resumption of debate interrupted on 1.3.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I call upon the Mover to reply. Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I rise to reply. The delay in replying was caused by unavoidable circumstances. I was expecting that the Committee would table its report. It has not but we have to move on. I thank the following Senators for their contribution: Sen. Moses Wetangula, Sen. Irungu Kang'ata, Sen. (Dr.) Agnes Zani, Sen. Pareno Judith, Sen. Mwaruma, my neighbour, Sen. Kasanga Sylvia, Sen. (Prof.) Kamar, Sen. Aaron Cheruiyot, Sen. (Dr.) Musuruve, Sen. Kibiru, Sen. (Prof.) Ongeru, Sen. (Rev.) Naomi Waqo, Sen. Ledama Olekina and Senior Counsel, Sen. Okong'o Omogeni.

Mr. Deputy Speaker, Sir, we have to deal with some of the issues that have arisen at a later date. Senators have raised a concern on the issue of historical injustices based on the 1963 boundaries. The compromise made by the Committee of Experts (CoE) on the boundaries in the 1992 Act is not something that we can change. Consequently, these

matters of historical injustices and boundaries will have to go to the National Land Commission (NLC).

*[The Deputy Speaker (Sen. (Prof.) Kindiki left the Chair]*

*[The Temporary Speaker (Sen. Pareno) in the Chair]*

Similarly, the question of marginalised communities is tackled very well and that is why I will address it later. The threshold we have put for altering boundaries cannot go beyond this, because it might further marginalise the marginalised communities. This is because they will not be able to marshal more than enough forces. On the question of managing and sharing resources, we have resources in Turkana. If you thought we need to anchor this in law, this is the time, especially the 15 per cent threshold of moving a petition on the boundaries.

Madam Temporary Speaker, if the law contemplates that 10 per cent of voters can actually move a petition to dissolve a county and send a government home, why would anybody think that a 15 per cent threshold to alter a boundary is very small? This is particularly because the boundary of counties, in most cases, will affect a very small section and not the entire county. I do not expect that it will do so.

Madam Temporary Speaker, on the *ad hoc* Committee of forming a Commission, Article 188 does not contemplate having a permanent commission; it only contemplates a commission where there is a need, hence the reason we have proposed an *ad hoc* commission. The Independent Electoral and Boundaries Commission (IEBC) was of the view that we should incorporate mediation in the commission. Once again, that is not possible because then the question of an *ad hoc* commission is defeated if the mediation must highlight the formation of that *ad hoc* commission.

Madam Temporary Speaker, the most important reason is that we want to encourage people to talk. If the right Hon. Raila Amolo Odinga and His Excellency Uhuru Kenyatta can shake hands, then communities ought to talk before we have disputes and before we alter the boundaries. On the need to synchronise boundary issues, we are going to propose that in the alteration of Constituency Boundaries Board, that there should be synchronisation of boundary issues.

We will include that in the amendments that are coming up soon. I want to dissuade Senators who think that this is the time to increase or reduce counties; it cannot happen in this Bill. That is not the reason and it will have to come through another format. The 1992 boundaries remain the threshold of counties and this cannot change unless we change the criteria that the CoE came up with.

Madam Temporary Speaker, as I stated earlier, the proposed commission is *ad hoc*. The question on whether the commission should go to the IEBC, that will need a Constitutional amendment. This is because Article 188 clearly demarcates this province to an independent commission, which is not the IEBC. What is the role of NLC in mediation? We can include them, particularly where there are historical injustices.

*(Loud consultations)*



**The Temporary Speaker** (Sen. Pareno): Yes, what is it, Sen. (Dr.) Musuruve?

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker. I had to really make noise to catch your---

**The Temporary Speaker** (Sen. Pareno): Did you just say Mr. Speaker?

**Sen. (Dr.) Musuruve:** Did I say Mr. Speaker?

**Hon. Senators:** Yes.

**Sen. (Dr.) Musuruve:** I apologise.

Thank you, Madam Temporary Speaker. I had to do something to catch your attention after I pressed the button to intercept. I remember when the Bill came to the Floor of the House, I deliberately decided to stay on and make my contributions to it. However, I am surprised that Sen. Mutula Kilonzo Jnr. has not recognised me among those who gave their contributions.

**The Temporary Speaker** (Sen. Pareno): Is that a point of order? I do not think so.

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, it is good to recognise all contributors. If he has recognised everyone who made contributions, kindly recognise my contribution.

**The Temporary Speaker** (Sen. Pareno): What is your point of order and which Standing Order are you quoting?

**Sen. (Dr.) Musuruve:** Number one.

*(Laughter)*

**The Temporary Speaker** (Sen. Pareno): I rule you out of order, Sen. (Dr.) Musuruve.

*(Sen. (Dr.) Musuruve spoke off record)*

You are out of order, Sen. (Dr.) Musuruve.

Sen. Mutula Kilonzo Jnr., please proceed.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, maybe I mispronounced the name; but let me repeat for the avoidance of doubt. I recognise Sen. (Dr.) Musuruve. I have the list here for the contributors of the Bill; I recognize you for the good work you did and for sitting through.

In conclusion, Madam Temporary Speaker, the concerns raised by the Senators and the stakeholders will be incorporated in the Bill. The dispute that arose between Kisumu and Nandi counties found itself in the editorial of the *Daily Nation* yesterday. Therefore, the urgency of making sure that this Bill becomes law cannot be over-emphasized.

Madam Temporary Speaker, I beg to reply and I move, under Standing Order 55(3), that you defer the putting of the question to a later date.

Thank you.

**The Temporary Speaker** (Sen. Pareno): Noting that we cannot do a division, I, therefore, order that division on this matter be deferred to tomorrow in the next sitting.

*(Putting of the Question on the Bill deferred)*

Next Order.

THE DIVISION OF REVENUE (AMENDMENT) BILL  
(SENATE BILLS NO. 14 OF 2018)

**The Temporary Speaker** (Sen. Pareno): Proceed, Chairperson of the Standing Committee on Finance and Budget.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to move that the Division of Revenue Bill (Amendment) Bill (Senate Bills No.14 of 2018) be now read a Second Time.

I want to bring to the attention of the Senators why we have moved an amendment of this Bill. After we passed the Division of Revenue Bill and after it was assented to by His Excellency the President, we received a notice from the National Treasury that they had, infact, signed two additional conditional grants. These are the Agricultural Sector Conditional Grant (ADSP2) for a sum of Kshs1,005,473,370; the Water Tower Production and Climate Change Mitigation Adaptation Program covering 11 counties of Kshs880million and the World Bank Kenya Urban Support program Urban Institution Grant of Kshs1,854,000,000.

Madam Temporary Speaker, upon advice by our very competent legal team and contrary to the opinion, suggestions or recommendation offered to us by Treasury, we thought that this cannot be added into the counties revenue allocation without being included in the Division of Revenue Bill, hence the amendment. However, to clear the air, because there is a concern that has been raised and I have heard it in the public domain; that there are people who think that the Senate has no mandate to amend or cannot move an amendment to the Division of Revenue Bill. I want to allay their fears today and forever to keep their peace.

The Supreme Court Advisory Opinion No.2 of 2013 was very clear that the Division of Revenue Bill is an ordinary Bill and can be moved in the Senate. I have said that we were given very good advice by a very good team of the Senate and we do not doubt them and neither do we doubt ourselves; we, the ones who think that we have some good legal knowledge of some of these matters in the Constitution.

Madam Temporary Speaker, I just want to make two or three observations of what the Committee decided on this Bill. This Amendment has brought forward several issues. Number one, we have now discovered that each county is receiving Kshs19.6billion for rehabilitation of village polytechnics. The question is; on what basis are Tana River, Makueni, and Nairobi, Turkana and Kajiado counties receiving the same amount?

Number two, we have also brought to the attention of the Treasury and the stakeholders when they came to us that it appears to us these conditional grants are now

slowly clawing back the functions of County Governments under the Fourth Schedule. What is more saddening is that there is no framework.

As we pass some of the conditional grants, two things must bear and must be noted. First, we Senators are not aware of the conditions for the grants. Once the grants are given, we do not know the implementation mechanism. Secondly, we have no method of checking whether counties are complying with the conditional grants. Therefore in the Report we have tabled today, we have recommended to the Commission on Revenue Allocation (CRA) to come up, not later than end of this year, with a framework and a policy document to show how the conditional grants will find their way before we do the Budget Policy Statement (BPS) and division of revenue, so that Senators seated in this House can interrogate some of the issues.

A total of Kshs40 million will go to Wote Town for the Kenya Urban Support Programme but I have no idea as the Senator for Makueni what that money is supposed to do. Is it supposed to do street lighting, drainage, construction of sewer or provision of piped water? We cannot even ask the necessary questions.

Similarly, we have grants for medical equipment which are also conditional grants. Members of the Committee on Finance and Budget, having noted that this can be the next NYS scandal, we have recommended that an audit be done because we do not understand why conditional grants can increase from Kshs4.5 billion to Kshs6.1 billion without any amendment and then to Kshs9.4 billion in this financial year without any paperwork and explanation. This is a scandal in the making.

Therefore, as we approve some of the conditional grants, the Committee on Finance and Budget has made very drastic recommendations, including the interrogation and submission of all contract documents between the national Government and suppliers of the leasing of medical equipment. A few minutes ago, I tabled a statement on Makueni. We do not know who is supposed to repair the equipment and the contract is not with us or the county.

We also want to see the memorandum of understanding between the national Government and the Council of Governors (CoG). In order to stop conditional grants being signed throughout the year, we recommend that a policy framework be developed by the Commission on Revenue Allocation (CRA) to ensure that signing of conditional grants complies with the budget cycle. We want to avoid a situation where the National Treasury walks to us in the middle of a budget cycle and demands that we amend the Division of Revenue Act or the County Allocation of Revenue Act (CARA).

We have also recommended and Senators ought to look at this, that the Second Policy on Equalisation Fund be tabled as quickly as possible because the Equalization Fund Appropriation Act signed by His Excellency the President a month ago will lapse on 30<sup>th</sup> June yet projects that were supposed to be implemented in the First Policy have not been implemented and the ones that are supposed to be implemented in the Second Policy have not been identified.

We have attached a schedule of counties that will benefit from the three grants. Other than Nairobi and Mombasa counties that are excluded from the Kenya Urban Support Programme, the rest of the 45 counties will receive funds for that programme.

Only 11 counties which include Baringo, Bungoma, Busia, Homa Bay, Kitui, Kwale, Machakos, Makueni and others will receive the Water Towers Conservation Fund.

The Senate has the liberty to interrogate this matter and you can only do so by looking at this document and the figures. There is no paperwork with us but we have requested, as the Committee on Finance and Budget, to be explained this matter in detail on your behalf together with the infamous Medical Equipment Leasing Plan (MELP). In ordinary circumstances, when you lease equipment, the equipment does not belong to you but to the person you leased it from. The only thing is that once you use the equipment, you have to pay for its use and maintenance.

The MELP was signed by the national Government. We have paid for the equipment costs like an outright purchase and also paid for the repair of the machines in advance. Therefore, Senators need to ask their governors an audit of the machines because I suspect something is going on.

In a conversation with the Governor of Kitui, he has no idea why they are paying Kshs200 million every year because in their assessment of the equipment they have, they ought to pay less. When you inquire from the Treasury, you will be shocked that these figures are actually estimates. So, we still have fundamental issues that are pending that ought to be interrogated.

Lastly, this Senate cannot be used as a conveyor belt for purposes of passing conditional grants which we have no objection to at *prima facie* but we do not want to appear as if our work is to rubberstamp things that we do not know.

With those few remarks, I beg to move and request Sen. Farhiya to second the said Bill.

**Sen. Farhiya:** Madam Temporary Speaker, I wish to second this Bill. The Committee has been asking why the National Assembly does not approve the audit reports. We are being told that the equitable share of revenue is 33.6 per cent, which is based on audited accounts for FY 2013/2014. When I asked a question during the Devolution Conference, a Member of the National Assembly who was one of the panelists said that because of the revenues that we generate, even if they approve audits, it will not change the numbers. It is right that it will not change the numbers but it will change the statistics.

Right now the equitable share of revenue to counties is at 33.6 per cent. If you compare the total sharable revenue that the division of revenue is based on, you will realise that we are giving counties 18.6 per cent. Although the numbers will not change, in my view, the statistics are misleading because this is not based on the current revenue.

The other thing that I have an issue with is the delay of audit reports. The National Assembly is actually sabotaging the President's drive to fight graft. If you are looking at the audit report for FY 2013/2014, who is interested in something that happened five years ago? We need to look at current figures and deal with the current issues, so that both Houses are relevant.

I want to be on record that Members of the National Assembly need to pull up their socks when it comes to approving audit reports. I do not know what they have been doing since 2014 because they have not approved reports up to date. So, statistics matter.

Madam Temporary Speaker, if you compare the total county allocation, which in this amendment is reading 39.8 per cent, with these statistics, and with the current numbers, it is only 22.1 per cent. Let us not talk about numbers only because statistics also matter. This means we are giving misleading information for a simple reason. The National Assembly has failed to approve audit reports. The last one they approved was for the Financial Year 2013/2014, therefore, denying counties resources because they are entitled to 15 per cent, although now it is slightly more. If the other way was correct, then we would have no mechanism of challenging.

In the budget process, budgets are estimates. I used to have a role when I was the Finance Manager in an organization where I worked previously. I used to ensure that the country programme had the correct budget for that year. On any budgeted item, I did not need other people who generated the budget to defend it as I knew what I was defending.

Similarly, when we ask the National Treasury about leasing equipment all they say is: "It is the Ministry of Health." What budget are you trying to bring if you do not know what you are bringing to the table? Therefore, they must be able to defend the budget that they are bringing on the table.

Madam Temporary Speaker, budgets are also like a yardstick to measure performance. If grants and loans that are in the pipeline--- We are already in discussion and about to sign an agreement, I do not see why the National Treasury should not include that in the budget, especially when it is almost being concluded. This is because part of this amendment was brought to us for approval in February. We said that since there is not enough time to spend this money, we are not amending the previous budget, so let us include it in the coming budget. That was in February.

The Division of Revenue Bill was also brought in February. However, what I do not understand is why that was not included in the Bill then and it is being brought now. The other question that we asked is when it would stop. For example, will we amend it every month because another grant is being approved?

The other issue was why we could not synchronize our donor and grant approval given our budget cycle. Why could we not ask the donor to appreciate that so that it is synchronized? Therefore, if budgets are estimates and yardsticks for performance, you are supposed to give your estimates to someone to assess how good you are in budgeting in terms of expenditure. Less than a month when The Division of Revenue Bill (National Assembly Bill No.7 of 2018) was approved, you are bringing three amendments because donors have approved grants. This means there is a performance issue that needs to be addressed.

With those few remarks, I beg to second.

*(Question proposed)*

**Sen. M. Kajwang’:** Thank you, Madam Temporary Speaker. Initially, when I saw this on the Order Paper, I was a bit curious and afraid that this amendment could be affecting the division of revenue downwards. There has been some talk that since the Government is struggling to meet its revenue targets, there is need to revise the division of revenue.

I am glad that this amendment seeks to increase the share that is allocated to county governments from Kshs372 billion to Kshs376.4 billion. So, we are seeing an additional Kshs3.739 billion going to county governments. If we were the people who celebrate little successes, then the Senate would have celebrated that we are giving counties more. However, it is our duty, as the Senate, to look out for the interest of counties and make sure that they have got more resources to carry out the functions that have been assigned to them in the Fourth Schedule of the Constitution.

I am looking at the Schedule that we are amending on the Bill. There are 12 conditional grants. The Division of Revenue Act that we passed had nine conditional grants. We have now increased them to 12. I agree with the Mover of this Bill that we are having too many conditional grants. Indeed, the Commission on Revenue Allocation (CRA) has raised this matter. Every other time we are going into discussions on division of revenue, the Government is using conditional grants or conditional allocations in a manner that seeks to fly in the face of the intention of devolution as captured in the Constitution. There are some conditional grants that have become permanent, for example, the Managed Equipment Scheme. I believe that the Managed Equipment Scheme is one area that, the County Public Accounts and Investments Committee which I Chair, has had a conversation with the Auditor-General on.

Madam Temporary, Speaker, we need to carry out a performance audit of the investments that have been poured into the health sector since the advent of devolution. Before we pour additional resources in the name of universal healthcare, I want to assure the Senator for Makeni County that this is an area where we can have a discussion as you enrich the scope of that special audit that we want the Auditor-General to undertake.

There are other permanent conditional grants like the Roads Maintenance Levy Fund. We have let counties down because we are still holding on to the Roads Bill. In the last Parliament, we tried to negotiate an increased allocation to counties because we had made a determination as a Senate that the national Government will deal with Classes "A," "B," "C" and "D", roads and county governments will take up the rest of the roads. That meant that the amount of money that would go for maintenance of roads in counties ought to have increased in tandem with the number of kilometres that county governments have to maintain. We also need to see the Roads Maintenance Levy Fund, which has become a permanent conditional grant, increasing.

Madam Temporary Speaker, the Mover has talked about inadequate mechanisms for oversight on conditional grants. For those who were in this Senate in its very first term, you will remember that when we were establishing the county governments, the Transition Authority (TA) allocated an amount of money to help each county to establish structures in the first few months of devolution. Each county got several hundreds of million shillings. It became very difficult for the Senate to ask questions about that allocation from the TA.

Most of this money was used to construct and refurbish houses for governors and their deputies and to refurbish offices for governors and speakers. However, to date, that money has not been audited or there was no oversight on it because whenever we ask questions we are told that money came from the Transition Authority which is an agency

of the national Government and, therefore, it is beyond the scope of the Senate. That money was misused and abused to a great degree across the counties.

When we were in Kakamega County, the Vice Chairperson of the Council of Governors, Gov. Waiguru, indicated that the Council of Governors and the National Treasury were coming up with regulations on conditional grants. Indeed, when we went for Legislative Summit in Mombasa County, the Deputy President talked about certain regulations on legislation on conditional grants. In fact, he reported that the matter is already in Parliament. I do not think that matter has come before Parliament. When I consulted with the Chairperson of the Committee on Finance and Budget, he indicated that we have not received anything from the Executive to legislate on conditional grants. We need to come up with proper regulations to help us get a good overview and oversight on conditional grants in this Republic.

We do not need to wait for the National Treasury for we have been given the power as the Senate to legislate. If the National Treasury, the Council of County Governors (COG) and the other levels of Government are going to be slow on this, then the Senate should take the lead to ensure that we have got some credential guidelines on conditional grants.

Whenever the Auditor-General looks at the accounts of the counties, much focus is always on equitable share and not conditional grants. As such, even the Senate's Committee on County Public Accounts and Investments (CPAIC), in its oversight role, on behalf of this House, has not effectively looked at how conditional grants have been applied and whether proper returns have been made.

In the last County Allocation of Revenue Bill, which has now become an Act, there was an expansion in the appendices, the last pages, where some of the conditional grants came with specific condition on utilization and accounting. We need to come up with one framework that will guide the Auditor-General.

I have always felt that Article 187 of the Constitution gives the national and county governments a lot of room to negotiate and agree on issues. Article 187 talks about agreements between county governments and the national Government. Conditional grants seem to be one way through which the national Government is passing on some of its functions to county governments but the Constitution is clear in Article 187 that even when you transfer the function, responsibility still remains with the level of government to which it was assigned in the Fourth Schedule. Instead of having 12 conditional grants and five or six other conditional grants that we have been asking for---

I have been a firm believer in the Commission on Revenue Allocation's (CRA) proposal every year that the national Government should provide a conditional grant for establishment of cancer treatment centers. That was captured in the last Division of Revenue Bill in the recommendations of CRA and it has been captured for almost three years. I do not understand why we, as the Senate or collectively as Parliament, would look down upon CRA's recommendation that we set up regional cancer treatment centers when cancer is such a big menace. This is the kind of country where you wake up with Kshs60 million in your account. That is all that glitters in this country, yet we object to the establishment of regional cancer treatment centers. That is being insensitive to a great

percentage of this country. That is a conditional grant that I would like to see coming up in the Division of Revenue Bill.

Another conditional grant would be a grant to county governments to develop education infrastructure in primary and secondary schools and that would effectively help us deal with this issue called the national Government Constituency Development Fund (CDF) because the so-called CDF is right now being used to build classrooms in primary and secondary schools, police stations and also to give bursaries. Instead of sending that money through a different fund, this money should be going to counties as conditional grants.

The other conditional grant that I would like to see coming up in future would be the national Government ceding money to counties, particularly counties in fish production zones, for establishment of fish processing plants. We can set up one in Lake Victoria, Lake Turkana, the Indian Ocean and even have one in Central Kenya where a lot of aquaculture is taking place. That will have the effect of giving us a very lengthy Division of Revenue Bill.

Therefore, the solution, as per the provisions of Article 187, would be sitting with the COG at the Intergovernmental Budget and Economic (IBEC) Summit or whatever level and coming up with an agreement. It is that agreement that can be captured in the Division of Revenue Bill. It does not have to be itemized but the terms and conditions can be made very explicit. We can then have the national Government using county governments to execute, rather than the national Government trying to create alternative avenues like CDF and the Ward Development Fund that we are now talking about or even the alternative avenues like the provincial administration.

I want to make the final point. The seconder of the Bill has talked about the basis of revenue allocation being the last audited accounts and, in our case, it being the 2013/2014 audited and approved accounts. I want to sympathize with the National Assembly, particularly its Public Accounts Committee. If you look at the number of accounts and entities that the National Assembly is expected to scrutinize and report on for them to certify the audits of a financial year, they are just too many. If you are to even divide them by the number of Members of the National Assembly, you might find that the 300 plus Members of the National Assembly might be required to look at the accounts of at least two or three national entities.

It has been my view that the manner in which we conduct our hearings or our considerations as Public Accounts Committees (PAC), be it in the Senate or National Assembly is wrong. We need to sit down and come up with a better framework for review of the Auditor-General's findings.

The society has gotten to a level where the work of the Public Accounts Committee is now reduced to fighting corruption when we have bodies like the Ethics and Anti-Corruption Commission (EACC) and multiplicity of laws to deal with the scourge of corruption. Everyone is looking at CPAIC in the Senate and PAC, Public Investments Committee (PIC) and Special Funds Account Committee in the National Assembly to help them fight the scourge of corruption. Audit review is not just an issue about corruption; it is an issue of effectiveness and efficiency. We are talking about wisdom, probity and usefulness of decisions that public officials have taken.



We have already engaged the Auditor-General to find a different way of looking at the reports coming out of the counties because we are not doing any better even in the Senate. We had a debate here about presentation of reports for 2013/2014. A number of Members said that they are not interested in the 2013/2014 reports but are rather interested in the 2016/2017 reports. However, with a lot of humility and respect to my fellow colleagues, I think that is not the right line of argument. This is because there are those people who come from Nairobi City County who are interested in what Governor Sonko is doing today but there are also those who are interested in what Governor Kidero did.

There are those who come from Bungoma County who are interested in what Governor Wangamati is doing today and are also interested in what Governor Lusaka did in the days gone by. When we come here and say that the past reports can just be swept under the carpet, yes, we can forget about it, but what about the citizens of Bungoma who need an account for the tenure of Governor Lusaka? What about the citizens of Kisumu who need an account for the tenure of Governor Ranguma?

We have these backlogs because we have been doing our audit process wrongly. Let us not be too harsh, as a Senate, on the National Assembly, particularly on its PAC. Though I believe that they can do better, we need to come up with a better framework. We need to establish the capacity and the competence to carry out some of these audit reviews internally. Some of us have been looking at the possibility of expanding the Public Finance Management Act so as to expand the section that talks about the Parliamentary Budget Office, for it to become a Parliamentary Budget and Oversight Office.

We took a tour of the United States and went to about 10 States with Sen. Mutula Kilonzo Jnr. and Sen. Dullo and we saw that there is an oversight or audit office in every state legislature. In fact, in many jurisdictions, the Auditor-General reports to Parliament. We have an Auditor-General who reports and is directed by no one, except the Constitution and the people of Kenya. We need to develop competencies within Parliament for we do not have forensic experts and we do not have investigators. I chair a Committee that is supposed to investigate, but there is no one trained in investigation, forensics or data analysis. If you bring a letter to me, I have no capacity to tell if it is forgery or not yet these are established professions.

As Parliament, we need to invest. Through our Parliamentary Service Commission (PSC), we must ensure that we set up a unit that will support the committees and oversights them. That is the only way we will make sense out of these conditional allocations that we are adding and help the Public Accounts Committee (PAC) of the National Assembly to be up to date with their audit.

**The Temporary Speaker** (Sen. Pareno): Let us have, Sen. (Prof.) Onger Samson Kegengo.

**Sen. (Prof.) Onger:** Thank you, Madam Temporary Speaker. I rise to support this Bill. Anything that increases revenue to county governments will always receive my positive remarks. I believe that some of the areas that have been included in this Bill for support as conditional grants are important in uplifting the economies and services of county governments.

We have been struggling to increase the equitable share of the county revenue. From the last Senate, it has now marginally gone up to Kshs376 billion. When you add that to the conditional grant increase in this Bill, considering that the last Division of Revenue Bill that was presented before this House was Kshs372 billion, we see a new figure of Kshs376,481,384,140. That is a nominal increase of 40.2 per cent. I am referring to it as nominal or relative because the Bill is based on the audited accounts of 2013/2014 Financial Year whose total revenue collection at that time was slightly under Kshs1 trillion.

If I heard correctly from the Mover of this Motion, he indicated that when the National Treasury presents this budget before the two houses of Parliament, the total revenue receipt in the budget cycle is expected to rise to over Ksh3 trillion. If we talk of equitable county share based on that overarching budget, then we will be talking of something substantial for the counties rising up to respectable levels. Nevertheless, we have to deal with what we have at the moment until the National Assembly pulls up its own activities in audit by updating and approving the audited accounts of at least, latest, 2016/2017 Financial Year. We need to play a hard diplomatic card in persuading them to do this. At the end of the day, this serves the constituencies that are located within the counties. It is to their benefit that if these areas are well developed, they will not be struggling to look for funds to accomplish certain development targets.

I now shift focus to areas of increase, particularly on the Agricultural Sector Development Support Programme (ASDSP) of Ksh1,005,453,370. This conditional grant is geared towards making transformation of crop, livestock and fish production into commercially-oriented enterprises that will ensure sustainable food and nutrition security. The situation is pathetic if you were to do a complete survey in our country today. Our farmers are struggling to deal with the *Necrotizing Fasciitis* disease that recently rampaged their tender maize crops. Whenever they look for support, it comes late in the crop cycle when the crop is completely destroyed. Some of them have to re-plough and plant afresh. So, are we really building capacity?

This conditional grant ought to go towards building people's capacity to efficiently produce enough food to guarantee food security. It is just the other day that we dealt with the Food Security Bill in this House. One of the reasons why the Bill was brought is that there was scarce resource provision towards our food basket. We try to create sustainability in our production elements, particularly on food sustainability in our country so that nobody goes hungry. Every person has a right to food, health and everything that matters in this country. Therefore, if we are not able to empower our farmers to rise to the occasion and produce sustainably commercially viable enterprises that will improve their welfare and per capita income in their households, it is going to be difficult to raise the levels of development in our counties.

I have raised this issue because I know if we work conscientiously together with the national and county governments, this will make a difference. Therefore, just like the other Members who spoke before me have said, there is need to have a transparent way of accounting for these conditional grants.

The other area that is the basis for us to amend this Bill is the Water Towers Protection and Climate Change Mitigation and Adaptation programme; it is not over. The

floods have caused ravages in this country. One of the reasons we got into this cycle is because we have unsustainably destroyed our own forest cover in some of these towers. Areas that are targeted are Cherengany Hills in Mount Elgon and later on covering other areas like the ecosystems in Lake Victoria and Lake Turkana. This will affect Bungoma, Turkana, Elgeyo-Marakwet, Kakamega, Kisumu, Nandi, Siaya, Trans Nzoia, Uasin Gishu, Vihiga and West Pokot counties. I hope that other than sustaining the ecosystems and forest cover, we will also retain and conserve the amount of water that is wasted and causing a lot of damage and flooding the roads making them impassable.

The third element that gives rise to this amendment is the Kenya Urban Support Project (KUSP). This is an important grant. One time when I was the Minister for Local Government, the KUSP is the one that did most of the infrastructural development within Nairobi City, parts of it in Mombasa, Malindi, Kakamega, Nyeri and other places. These funds that are being given by the World Bank, if properly utilised, can change the landscape of our network system, particularly with the new development of the new urban agenda which has quite an array of activities that need to be done. First, it is the question of proper planning for urban centres so that they do not become sprawls of slums. If we are not careful, we will slowly develop most of our urban centers into slum areas.

As far as I know, slums cannot produce or add up to any economic development of any nation. They retard and pull you back. Therefore, the New Urban Agenda has an ambitious plan of planning, particularly spatial planning and ensuring that urban centres are orderly and properly planned; the infrastructure and the value of the land is properly planned. This will ensure that at the end of the day, the land appreciates. Where there is good planning, you are able to attract the investment for this New Urban Agenda programmes.

There will be many more resources flowing. When I looked at the international basket when we were in New York to negotiate a New Urban Agenda finally at the General Assembly, one of the things that struck me is that the resource flow to this basket will be far greater than the small grants we are looking for in the name of conditional grants. This is because they have a potential of investments and people want to invest where they think they can have high returns. I think Africa, and Kenya for that matter, has a potential of attracting most of our investors to most urban centres in our rural areas.

I have a major problem with the question of universal healthcare. I started this programme as the Minister for Health. There are 13 stages through which we must go and we had only done three in the final development of this universal healthcare. It will cut out with a major emphasis on promotive health rather than curative health. What you see today, the balance is the other way round. There are more people seeking curative services rather than promotive and preventive services. If we had embarked and invested heavily on our promotive and preventive services, we would have cleared all immunizations and other non-communicable and communicable diseases. At one stage, we were able to clear measles which was a big scourge and the simple programmes of diarrhoea and vomiting in our children, which was a major outpatient attendance by all our people.

What are we hearing today? We are getting the emergence of cancers all over the place, requiring us to put up cancer centres in various regional hubs. This is a very expensive way of going. Whereas we must be conscious of the curative aspect of it in order to alleviate the diseases burden within our society, we should also be going in full speed and steam in both the preventive and promotive aspect of our healthcare.

That brings me to the core of the question of the lease-hire of health equipment. This is a very upsetting figure. From a figure of Kshs4.5 billion to Kshs9.4 billion leasing of medical equipment, I wish half of that money, the Kshs4 billion, went to preventive and promotive exercises. There is wear and tear on this equipment. I have used this equipment as a professional. After three or four years this equipment degenerates to a level where they must be replaced and there is no way they will be replaced. So, we will be left with junk equipment in yards. Some of them are radioactive, like the X-ray machines. Some of them are machines that we use for measuring certain biochemical data, which are labeled with chromium. These are dangerous materials that if we are not careful in the disposal process, we might end up with a much bigger problem in health than we have ever envisaged.

Therefore, I would rather go for a very selective way of this medical equipment; very measured on how we want to bring it in, at what level and extent. By pumping more money to preventive and promotive healthcare, we shall achieve our universal healthcare system because it will be less expensive and more supportive.

Madam Temporary Speaker, these conditional grants are welcome, but we want to have a framework upon which we can look at their audit books and see how this money is being spent at the county level. When you start to inquire at the county level how these funds are being used, nobody knows the details. Everybody will tell to go to the Ministry of Health. When you go there, they tell you that they were just given the tender. When you look for papers that brought all these equipment in, you are not told exactly how they came in.

Therefore, I am passionately pleading that we now must change our tactics and way of doing things, particularly in managing the resources that are at our disposal. More so, when these resources come as conditional grants and are expected to raise our level of performance to an expected measure, we do not have a performance measuring yard. They just come in and walk out and you do not know who is coming in. It is another way of burdening us with many experts coming to tell us what we should do.

In order to give more time to other people, I just want to support this with those few remarks. The amendment to the Division of Revenue Bill is welcome but let us see what these conditional grants will do. They must be very clear how they will be organised.

Finally, Madam Temporary Speaker, I look forward, in the life of this Senate, when we should be able to have a Division of Revenue Bill based on the current Budget estimates, which now stands at over Kshs3 trillion. At the moment, we are below Kshs1 trillion based on 2013/2014 Financial Year audited accounts.

I beg to support.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. I rise to support and want to make a few comments. I would wish all my colleagues to speak to these issues so that we can move together.

I have seen the additional conditional grants that have been made in line with the Big Four Agenda pillars of the President. One of the biggest impediments is the pending bills of around Kshs90 billion that most counties owe to contractors. Going forward, the main call from all Senators is to ensure that there is prudent and proper accountability of the resources that we work hard to ensure our counties get. For the last five years the issue of pending bills of Kshs90 billion is one of the bottlenecks that has delayed the entire process of ensuring that our counties move forward.

I agree that the Agricultural Sector Development support Programme is in line with one of the Big Four Agenda of the President on food security. Therefore, this is welcome, noting that some of us come from agricultural areas of Nandi County and the North Rift, which literally feed this nation. It will ensure that we have additional funds through conditional grants. We will ensure that our farmers have the necessary support in terms of farm implements and subsidies, so that they produce more. I agree that the Food Security Bill that we have in this House will go a long way in ensuring that they go forward.

Madam Temporary Speaker, the agricultural subsector development support programme is very important. I know that counties play a critical role because most of these functions have been devolved. As we speak, the agricultural sector is faced with a lot of challenges. I am happy that the Senate Committee on Agriculture, Livestock and Fisheries today invited the Cabinet Secretary for the Ministry of Agriculture, Livestock and Fisheries, Hon. Mwangi Kiunjuri, to shed light on the National Cereals and Produce Board (NCPB) fiasco.

Madam Temporary Speaker, going forward, this is important because it will ensure that the issue of food security is taken seriously by increasing resources. However, even as we increase resources that will support the agricultural sector in this country, especially in the regions that depend on agriculture, we should also protect these resources from being stolen. We should increase resources that will benefit our farmers. We should not be seeing the scenes that we are seeing now, with the circus of the National Youth Service (NYS), the NCPB, among other scandals. We are not interested in looking at people who are displaying tattoos or applying lipstick in courts of law. We should make sure that the money allocated is used prudently. We should not increase money for the agricultural sector and then, at the end of the day, we have other scandals.

Madam Temporary Speaker, I am cognizant of the fact that the first scandal to have ever happened in this country was a maize scandal that happened in 1965. Therefore, we are not interested in hearing about more scandals and I hope this is the last one. Even as we increase resources to the agricultural sector, we should ensure that we protect and guard them jealously so that our farmers can benefit. This is because we want to make the agricultural sector more attractive. Where I come from, the average age of a farmer is 60 years. Many young people are unemployed and they do not have opportunities. How do we make the agricultural sector more attractive if we do not create more resources? As we wait for the President to implement the issue of food security, we

should also make sure that agriculture is more attractive to the young people. Therefore, it means that we must allocate the necessary resources.

Secondly, Madam Temporary Speaker, I have looked at the Equalization Fund and I always had a feeling that it is not done fairly. For example, Tinderet sub-county in my county should benefit from the Equalization Fund. I know that there are boundary issues at the moment, but I will not dwell on them because Sen. Mutula Kilonzo Jnr.'s Bill will cure them. I can see my neighbour, Sen. Nyamunga, is alert, but I will not go into the boundaries issue now. However, I note that Tinderet sub-county in Nandi County is more prone to natural disasters because we have had three landslides in Metetei, Tereno and Cherendo. Therefore, it is a unique area that should benefit from the Equalization Fund, just like the other areas.

Madam Temporary Speaker, Article 43 of the Constitution provides for basic human rights and water is essential and no longer a privilege. We should ensure that we provide sufficient clean water so that we can prevent diseases. It is worth noting that my county is now developing one dam that will ensure that we have access to clean water. I am happy that this has been factored in. Similarly, the County Government of Nairobi should work hard to ensure that we have access to clean water which will reduce diseases.

Madam Temporary Speaker, I know that universal healthcare is important and that it is one of the President's Big Four Agenda. However, I agree that we are having challenges. In fact, it has reached a point where there was a conversation to the effect that we wrongly devolved health to our counties. However, I am now happy that one of the President's Big Four Agenda is universal healthcare. This issue of leasing medical equipment should be relooked. I agree with most of my colleagues because leasing means that at the end of the day, you will return the equipment; it is like taking a loan. Can we find a way in which counties can have their own equipment so that they do not need to lease them? This is where money is being stolen.

Madam Temporary Speaker, luckily enough today, my Committee met with the Ethics and Anti-Corruption Commission (EACC). They were on record that they have forwarded 48 files to the Director of Public Prosecution (DPP). Some of these files include issues of county governments. I am not privy to that list, which is very secret; it is like electing a Pope in Rome. However, I suspect that most of those issues are about leasing of this medical equipment. I, therefore, urge the Committee on Health and the Senate to relook at this issue so that our counties do not lose more money through leasing. They should get their own equipment. Going forward, we need to agree that health is important because a healthy nation is a wealthy nation. Therefore, on health, I agree that counties have got a long way to go. There are even suggestions being floated that we should have a National Health Service Commission (NHSC).

Madam Temporary Speaker, we are aware that the Cuban doctors are in the country. Those are some of the issues that have been bedeviling the health sector that we need to have a conversation about. I am happy that my county got one radiologist from Cuba. However, what will happen when their term ends? Are the terms of service similar to those of our doctors? Are we building capacity in our county and referral hospitals? At the end of the day, in as much as we would want to have the injection of these Cuban

doctors, we also have to build the ability and capacity of our doctors so that they can meet the demands that we have across the country. I agree that we need to allocate more resources to the health sector. We also need to assist the counties to build their capacity, especially on staffing issues, among others.

Madam Temporary Speaker, Sen. (Prof.) Ongeru has discussed the issue of the Kenya Urban Support Project because he has experience on it. Even as we allocate money to ensure that we do infrastructural improvement support programme – for example, floods lights and foot paths that have been done which will reduce pedestrian deaths– counties must ensure that they have clean, organized and decent trading centres and townships. When you walk across any trading centre from Mombasa all the way to Namanga or from my county to Kisumu – where we are claiming seven towns –there is always a centre and a small slum. We hope that with this support programme that will be injecting into our counties, we will see beautiful and organized centres with access to clean water, good roads, street lighting and many other amenities. I know that among the agenda is that there will be gas pools, where people can cook using gas in their homes. This will consequently reduce exploitation of our forests. This is important. In Nairobi this is endemic because of the excuse of the rains. However, I have been told that in my county, roads are not being worked on due to the heavy rainfall. Why should we wait until we have heavy rainfall leading to excess floods and then use it as an excuse? I hope that the money allocated to the Kenya Urban Support Project will ensure we have more good small towns, trading centres or even urban towns with all the basics we have talked about.

Finally, I am a great proponent of technical courses. We have to appreciate the fact that the transition rate from Class Eight to Form One is not 100 per cent. It cannot absorb all the class eight candidates. With the support of county governments, we hope to rehabilitate youth polytechnics. They should be the same number as secondary schools so that our children do not end up being *boda boda* riders.

Madam Temporary Speaker, on this transformation that the government is talking about, we need people with technical skills. We need masons and electricians. We have degree holders who cannot fix a bulb. Technical courses are very important. I hope that the rehabilitation of youth polytechnics will greatly assist our young people. As we tell them, “go ye into the world and look for employment or create job opportunities” we must equip them with technical skills.

As we struggle to ensure that we have enough resources, I agree with my colleagues that the biggest impediment has been the slow audit of accounts by the National Assembly. We hope that the National Assembly will work hard to ensure that they fastrack on the audited accounts. As we discuss, allocation of more resources, we should do so in light of what the law provides and use the latest audited accounts.

The Ethics and Anti-Corruption Commission (EACC) appeared before our Committee this morning. On the issue of corruption, we told them that they need to fastrack the issue of ensuring that they look into and protect the resources we send to the counties. My worry is that if we do not take care, we might devolve corruption to counties and that will become another huge issue where we might spend more resources fighting. We hope our counties will have prudent use of resources.

Thank you, Madam Temporary Speaker.

**Sen. Olekina:** Thank you Madam Temporary Speaker for giving me the opportunity to contribute to the Division of Revenue Bill (Amendment) Bill (Senate Bills No. 14 of 2018). I agree with my brother Sen. Mutula Kilonzo Jnr., that it is time to push for a policy shift in this country.

A lot of these things being done by the national Government make it appear as if this House is not fighting for devolution. It is sad that it seems this Parliament does not implement a lot of things that are passed here, for example, the issue of conditional grants. We do not follow it up to see how that money is being utilised.

Madam Temporary Speaker, it is sad there are so many delays. We need to expedite and pass this amendment. It is not imperative to pass things which we cannot audit. It is time now Parliament enhanced its oversight role on these conditional grants. We have a lot of money allocated to support our agricultural sector to improve on value addition. It is very good on paper. However, we need to see its impact at the grassroots level. Is it really practical? I encourage the national Government, when thinking about these provisions, to consult county governments. They should not make any move before asking the county governments their opinion. Is what they want to do in the best interest of the people of Kenya?

It is very sad to learn that we are leasing equipment yet the way the agreements are drafted it is as if we are buying. When you lease equipment for medical use, it should not worry you whether it breaks down tomorrow or not. The person who has leased it to you should come, pick it and give you another one because we are paying for that service.

Madam Temporary Speaker, when we approve these conditional grants and send them to county governments, they are meant for a specific project. For example, we might say we want to use it to enhance support for agricultural services, urban planning or boost our polytechnics. However, if we do not follow through, how will we know it was used for the intended purpose? As we approve these amendments, it is important that this Senate now pushes for that policy change. We can even come up with new legislation that encourages public participation in the use of conditional grants. We are getting a lot of money.

I can see in these amendments, there is a lot of money being allocated to the National Hospital Insurance Fund (NHIF). A whopping Kshs4.5 billion is allocated to NHIF. What are we doing on the ground to sensitize the communities? Is it something which is good on paper only? We need to go out there and ensure everyone is registered with NHIF and access the services?

When we talk about the Water Tower Protection and Climate Change Mitigation Adaptation Programme, I am at a loss for words as to why the Mau Forest was not included. It is one of the most important water catchment areas we have in this country. When I see that this programme will only benefit Cherangany Hills and Mount Elgon, I wonder whether Mau Forest is considered as something that holds this country. We know that there are many rivers from Mau Forest that feed into Lake Victoria. We know that the Forest has been encroached by many people who are destroying it. Why can we not include it as part of forest ecosystem and protect it?



Madam Temporary Speaker, the only way that we are going to achieve any progress in this country, may it be improving on the levels on skills in our polytechnics, is when we involve the public. We have about 11 Level Five hospitals in this country. I see there is a lot of money which is being allocated for leasing of medical equipment. This Parliament ought to ask itself whether that money is enough to support those hospitals.

It is imperative that the national Government works in collaboration with the county governments to collect systemic data. This will tell us whether the money being allocated for conditional grants in terms of leasing of medical equipment or being sent to polytechnics is being used for the intended purpose.

I tend to believe that although these grants are conditional, the conditions of managing them are a little bit ambiguous. It is, therefore, important for us now to have a conversation with the office of the Auditor-General so that any audit reports that come to this House for us to consider, include these conditional grants.

I have worked with many donor agencies. When they give you money, they follow through. They want to see those audit reports for them to get value for their money. They visit grounds to ascertain whether or not their money was used for the intended purpose.

In a nutshell, getting feedback is very important. As we make these amendments, the discussion that we ought to be having now is how we are going to ensure that this money is properly utilized. It is a lot of money.

I am happy that there is more money now going into the county governments. When I see that the allocation has now moved to about Kshs376 billion, I am happy. However, I will not be happy if we cannot account for this money and if we cannot say that in Narok County, for example, a certain number of polytechnics were given these grants and a certain number of students benefited. I will not be happy to see that there is a lot of money being allocated to agriculture and yet in Narok County we are still selling wheat to people in Mombasa or Kisumu for value-addition. I hope that the national Government will work closely with county governments in these conditional grants to ensure that if it is value-addition, we do not sell wheat in its raw form from Narok to Nairobi. I want to see people from Nairobi coming to Narok County to buy wheat flour and creating more jobs there. This is when we are going to stop rural-urban migration.

Madam Temporary Speaker, although I support, I feel that we are just made to rubberstamp. This is done from a different place. We are brought and told: “We now have all these other conditional grants, now approve them.” I do not think that is fair at all. I do not think it is right. The only way that we can defend and oversight what we are approving is if we are involved from the initial stages.

The Constitution talks a lot about public participation. The people of Narok County should be involved in the decision of whether or not the hospitals in Narok County should lease equipment. This is because if you sign a memorandum with the Government and you refuse to take the equipment, you will still pay for them. I know in the last Government, the former Governor---

Madam Temporary Speaker, I am disturbed by the Senator for Kericho County. I have to say this. I am now looking at him talking on phone. I am getting concerned on

whether to listen to his conversation on phone or to focus on my presentation. You should find him out of order.

**The Temporary Speaker** (Sen. Pareno): I do not know whether the Member is raising a point of order.

**Sen. Olekina:** No, Madam Temporary Speaker. When you are speaking, thinking and so passionate about something, and the person you are looking at is on phone, it completely throws you off balance.

*(Sen. Cheruiyot spoke off record)*

Madam Temporary Speaker, we are not allowed to use phones in the House.

**The Temporary Speaker** (Sen. Pareno): If you are speaking on phone then you are out of order. However, I did not see him on phone.

Please, proceed.

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for protecting me. It is important. I cannot reiterate that we push for a policy shift. I do not want the people of Narok, Kericho or Bomet counties to continue shouldering the burden of paying for leasing of medical equipment, yet they did not consider whether it is value for money. All these contracts which are being signed, I dare say that these are huge corruption scandals just waiting to happen.

When we talk about devolution, let us fight for and support it. These grants are good. They will help build our polytechnics. However, if we cannot follow through to ensure that the money which was sent for building that polytechnic was used for the intended purpose, then we are not doing anything.

Finally, I want to focus on this issue of the Agricultural Sector Development Support Programme. This is the point that I was raising before I was interrupted. It is sad that in all counties that farmers work tirelessly, the agricultural support programs that we used to have many years ago are no longer effective. I hope that with this amendment, this money will be used to send more technical officers to the ground.

I hope the money will be used to bring these farmers together into corporations or cooperatives and help them come up with their own warehouses, help these farmers to add more value and create more jobs. We have so many opportunities but because of this disconnect between the need and the policy, we can never solve the problems of unemployment in this country.

Madam Temporary Speaker, although I support these amendments, I would urge this House and also the Committee on Finance and Budget to demand for more documents. We want to see these contracts between the national Government and the suppliers of this medical equipment. We want to see these memoranda between the county governments and the national Government. We also want to go down, visit and ensure that those equipment which are being leased to us are of use to us. This is because if you take equipment which is designed for a Level Five hospital to a Level Four hospital, they may not be of any use. We may not have adequate skills to operate that equipment.

Although I support these amendments, I would want to encourage that the Committee on Finance and Budget looks at the HANSARD and finds out the comments that we are making so that we do not burden the taxpayers with paying for things which they do not use.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Pareno): Sen. Nyamunga Rose Oendo.

**Sen. Nyamunga:** Thank you, Madam Temporary Speaker for giving me the opportunity. Being a Member of the Senate Committee on Finance and Budget, we had several meetings to discuss the Bill. We had reservations and at the same time we made recommendations to make sure that whatever commitment we are giving to this House is something that has been thought through properly.

First of all, I want Kenyans to realize that when we are getting grants from other governments, it is such a big sacrifice that they make. This is because a grant is not a loan that is repaid at any interest. It is something that is given for a certain purpose for the development of certain countries. If some countries can sacrifice to give Kenya grants to the tune of Kshs3.7 billion, we should take some of these gestures seriously to make sure that the monies that we get as grants are used properly to the benefit and for the intended purpose.

However, from what we know and the discussions that have been going on in this House this afternoon, it is clear that most Members are skeptical about the grants, how they are being used and their accountability. As a nation, we should continue to look at ourselves and reflect on how we have been rated or looked at by other development partners who keep giving us money in trying to support us to make sure that we move forward in terms of development.

Madam Temporary Speaker, looking at the issue of audited reports; they are supposed to give the management or nation guidance. It is an awakening to any government or nation on how they use or utilize their resources. Therefore, we cannot continue to have late audited reports. I am not sure if this is deliberate or the National Assembly is just not doing its work. I am really divided because I do not know the truth. However, I strongly believe that this is done deliberately so that the county governments are denied what they deserve.

We raised the issue of using the audited reports of 2013/2014 Financial Year to make allocations in 2018, that is way below. We should have been talking of the audited reports of at least 2015/2016 Financial Year. However, if we are still stuck in the 2013/2014 Financial Year, it means that we are not giving the governments a benchmark of how they can evaluate the performance of the national Government and that of the county governments.

The idea of auditing is to verify and certify; to make sure that the reports can be used to help the government to improve on the management of resources. Therefore, if they are late, then it means that we are not assisting the national Government to make the right decisions. The management or the Presidency cannot do that. The National Treasury, the Ministry of Finance or any other Ministry cannot make prudent decisions when it comes to the lateness in auditing.

The allocation to the county governments is pegged on the latest audited reports. Therefore, if we are on the 2013/2014 audited reports, it means that we are late and therefore denying the county governments the right amount of money that should be allocated to them.

Madam Temporary Speaker, when we raised the issue with the National Treasury, they said that even if we use the audited report of 2013/2014, they are still way above the 15 per cent. However, the 15 per cent is supposed to be the minimum. It is not the utmost. We are denying the county governments a lot of resources that should be going to them. The three areas that were identified to benefit from the Kshs3.7billion are to the development of our counties and that of Kenya.

If we look at agriculture, are we looking at the input or the infrastructure? The Government should concern itself with more of the infrastructure. We are still having rains. It rained so much in my county and people have ended up displaced. They are Internally Displaced Persons (IDPs) in their own villages because of the rains and lack of proper planning. Therefore, when we talk of about the development of the agricultural sector, are we talking about irrigation, putting up dams in places or the bread baskets of this country such as the Rift Valley and Nyanza?

It is very important that we utilize this money well and put it in the right place for it to add value to our agriculture. It is not just a matter of identifying a few counties and giving them money. It is about getting food security for Kenya. This issue should be looked into without being tribal in any way. It should be done in a prudent way to utilize resources.

Madam Temporary Speaker, what do we mean when we talk of water tower protection? There is already a scandal about the planting of trees. An amount of Kshs2 billion is still at stake. We do not know how it was spent. I do not understand how someone can say that anybody has trees worth Kshs2 billion in this country. What were the people who approved that budget looking at? If you ask me, I will tell you point blank that I do not know anywhere in this country where we can get seedlings or trees that are worth Kshs2 billion.

Therefore, if the money is missing, the people who were working on it knew that it was just to hoodwink the public and pretend that we are planting trees. If any school got trees worth Kshs10 million, it should be seen. In my county of Kisumu or my village, I did not see any school receive the trees. I hear that 205 schools were identified for the project. I do not know the counties that those belong to because I did not see any in Kisumu County. I think that Kisumu is one of the counties that should be concerned with tree planting because some areas like Kano are very bare and plain.

The water towers such as the Mau and many areas should be guarded. If we are not identifying the right areas and yet we say that we are serious with our money and work that we are doing, I can tell you for sure that many Kenyans are very skeptical when it comes to money being devolved to county governments because there are scandals, one after the other. The way the money is spent does not make anybody have confidence in even supporting the allocation to be increased.

Madam Temporary Speaker, I am happy that we have increased allocations in the right areas. Looking at urban development, we need to plan our towns and have neat and

properly organised towns that can pass the test of time. We do not want a situation where we live in slums forever. The slums that we have in Nairobi can be upgraded. I do not think that the cost of upgrading some slums in Nairobi, Mombasa, Kisumu and other big towns is difficult.

However, there is lack of commitment. Looking at the plight of the pastoralists, why do we not settle these people in certain areas and give them the provision of everything that they need. They need infrastructure; roads, water, electricity, schools and hospitals. Those are the things that are needed. Therefore, instead of letting people live like wild animals, and tell them that we are in the same country, we are not being honest as the leaders of this nation. We should pull up our socks and be more serious in the way we run the affairs of Kenya.

Kenya is a beautiful country and our people should not be suffering as they are right now in some areas. The distribution of resources should cut across and this should be the pride of any leader. If you are a leader and do not lead your people to prosperity, we should put a question mark after 55 years of Independence. Kenyans are being taxed heavily yet it does not reflect in development. Other nations are taxing themselves and giving us the money to develop our nation yet we are not doing it. As a Member of the Committee on Finance and Budget, I agree that it is important for appropriation to be done and it goes to the right purposes for which it is intended.

Madam Temporary Speaker, we have a big issue with the leasing of medical equipment. First of all, the county governments did not ask for the equipment. If they did, most of the equipment is lying idle in the counties and not being utilised. The personnel or staff who were supposed to have been trained to operate the machines were not trained. Therefore, most of the machines are still covered yet people are suffering. I do not understand why instead of leasing the equipment at such a high cost, the Government cannot establish one big hospital with all the equipment in Kenya instead of Kenyans going to India all the time.

After that, we could invite doctors from abroad to train our doctors. We are currently receiving doctors from Cuba. Under what conditions are they coming to train our people? If you give me one doctor or radiologist in my county, what value is that doctor going to add to that county? Why are we not taking our doctors to be trained so that they come back and serve us? Or why can we not set up a proper training centre with all the doctors from Cuba to train our doctors? This way, they will replicate those doctors.

Madam Temporary Speaker, I was informed yesterday that we have two sets of doctors who have gone through internship and have not been placed. These doctors should have been absorbed by our counties. Most counties do not have doctors yet we have trained doctors who have gone through internship but are still “hanging”. This is a burning issue. Most of the doctors are ‘A’ students. Their parents have suffered to educate them. Some of them do not come from privileged families. However, their parents have sacrificed and sold everything for them to graduate. After graduating and your parents struggling to educate you, you end up sitting at home despite being an ‘A’ student and doing your bit.

This happens yet in our own hospitals we do not have enough doctors. So, as we pass this, which is very important for us, we have made our reservations and recommendations; what we think is right and wrong. As the Standing Committee on Finance and Budget, we have done our bit.

Madam Temporary Speaker, I support the Bill.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker, for giving me this chance to make my contribution and share my thoughts as well on this Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018). It is an extremely important Bill that places duties or functions of the Senate right at the heart of it; something that we consider seriously as Members of this House.

For those of us that are fairly familiar with the history of this House, we do know that there were times when our colleagues from the 'Lower' House strongly felt that the Senate should not be given the opportunity to participate in this very important exercise of dividing revenue that has been raised nationally and sent to our counties. Therefore, every opportunity and time that we get as Senators to make our contributions and share our thoughts on this Bill, I find it to be extremely sacred and something that I cannot pass.

Madam Temporary Speaker, there are many things that bother me, first of all, as a long standing Member of the Standing Committee on Finance and Budget of this House. Every time we get to listen and go through an extremely rigorous process of giving our thoughts about how this distribution is supposed to be done and certain amendments that we feel should be included. Unfortunately, on many occasions, out of 10 or 20 suggestions, only two or three are incorporated when we are lucky to actually have any of them added on to our budget and the division of revenue.

It was not the intention of the drafters of our Constitution to have this House as a rubberstamp that only comes, debates and passes matters as presented to us. As representatives of the people, we speak to the very heart of the matters that we feel affect our people. Therefore, the thoughts and different ideas that are shared by the leaders in this House should be considered. Unfortunately, this does not happen. On many occasions, we have had the chance to question the Cabinet Secretary (CS) in charge of the National Treasury and his technocrats whether they incorporate our views or even get a copy of the HANSARD.

Perhaps, after the contribution of Senators during the Division of Revenue Bill and the County Allocation of Revenue Bill, a copy of the HANSARD should be sent to the county assemblies and the National Treasury. This will ensure that they listen to the very brilliant ideas that Senators continue to share with the country. However, they end up being flowery nice words that fill up the shelves of this Parliament without anybody taking them into keen consideration.

Of course, we will support this Bill because it is extremely important for our counties to have money. We will continue sending resources and try to strengthen and build devolution because devolution is working. It is making our counties and the lives of the people that we represent in this House better, the challenges notwithstanding. There are many things that we want to continue to address.

When I was walking into the Chamber, I heard the contribution by one of our colleagues; that as we speak about division of revenue based on the audited accounts of Financial Year 2013/2014, then we are not being sincere with ourselves. This is because I do not know the intention of the drafters of our Constitution when they talked about 15 per cent of the last audited accounts.

At some point, if the Government does not hasten the process of auditing its books of accounts, then we will have to move a constitutional amendment, such that it will only be 15 per cent of the budget. We are talking about Kshs379 billion out of a budget of about of about Kshs3 trillion. That is barely 10 per cent. We are cheating our citizens that we are giving them 30 to 40 per cent, yet the truth of the matter is that this is barely 10 per cent.

Therefore, the time has come for us, as Senators, to re-evaluate and think through and question our role in all this. This is because on many occasions the Cabinet Secretary (CS) for the National Treasury has appeared before our Committee. We even gave him a brilliant suggestion at the end of last Session – and the Auditor General concurred with us - that it is possible to outsource the audit of Government books if funds are provided. When we asked the CS, the National Treasury, he told us: “Every Government department is asking for additional money. Where do you want me to get it from?” He does not see the importance of hastening the audit process.

However, the truth is that it is not that they do not see the importance; it is because this delay continues to favour them. As a House, we must pronounce ourselves because we are the primary custodians and defenders of devolution. We must be able to tell the people the truth; that come the Financial Year 2019/2020, if we shall continue to do it based on the audited accounts, which at that time will be for the Financial Year 2014/ 2015, we will be cheating our people.

Even when it comes to our oversight function, at this point in time, our Sessional Committee on County Public Accounts and Investment (CPAIC) is looking into the books of the Financial Year 2014/2015. This means that there is a likelihood that some governors who were voted into office in 2017 will get out of office in 2022 without ever having appeared before the Senate to answer a single question. As this happens, we keep on passing additional money to the county. This is a question that we must think through critically. After the passage of this Bill, what is it that we can do to answer, first, the issue of oversight and, secondly, the issue of the audited books of Government, so that we can send the right amount of money to our county governments?

The challenges of mismanagement of the funds and all the other things are things that we can worry about later. What needs to concern us is whether we can continue to send additional resources to our counties and the desire by the national Government to continue to hold onto resources. We also need to pronounce ourselves on the issue of the national Government wanting to do functions that primarily belong to the counties. Those are contributions that I will address later on.

Madam Temporary Speaker, there is the controversial issue of lease of medical equipment. I have gone to Kericho District Hospital, which is in the county that I represent, and seen the kind of equipment that had been put there. They are brilliant and extremely important, but of what use are they to the residents of Kericho County, if they

are not functional up to now? The operators and the doctors who are supposed to give services using this equipment have not been trained to date, yet in each and every particular budget, we continue to pay. Are we really being sincere?

As Members of Parliament, why are we not speaking about this? Is it because we have AON and Jubilee Insurance covers that enable us to walk into Nairobi Hospital and other good hospitals for treatment? It should concern us that the people who voted for us do not get value for their money because the insurance is this money that we are passing. The value of a good healthcare system is not the equipment, but the service that is provided to the people who require that service. This is a question that we must continue asking.

There is something that I pointed out and will not tire of doing so. I know for a fact that in almost 150 to 200 constituencies, the Government through, the National Government - Constituencies Development Fund (NG-CDF) is building a technical training institute. Even with this, the National Treasury still wants to give the counties an additional Kshs2 billion in this financial year to rehabilitate youth centres. What are our priorities as a country?

If you have a technical training institute that is being set up and built to modern standard, why do you want to rehabilitate old institutions that, perhaps, nobody uses anymore? We ignored the directives of the Commission on Revenue Allocation (CRA). The CRA was asking for only Kshs4 billion to develop regional cancer centres and the National Treasury could not listen to them. Now, they want to set aside Kshs2 billion to dish out and tell governors: "Please, find out in the villages if there is any youth centre that requires rehabilitation and allocate money there." We are not being sincere.

Our thoughts as leaders and representatives of the people are important because the design, structure and architecture of this Constitution is such that it is a public participative exercise. Our thoughts and ideas this year should inform the decisions of the National Treasury and the budget makers for the next financial year. It is unfortunate that many times we have spoken and the good words and nice contribution that my colleague Senators continue to present in this House just dry up. Nobody takes them into consideration. It is a question that we must answer.

The Kenya Urban Support Programme (KUSP) featured so well during our Legislative Summit. We discussed this. The Chairman of the Committee on Finance and Budget gave a very good explanation. That you cannot claim to be supporting devolution and its entrenchment into our system and culture as a country if you are only supporting the executive and do not have any particular thoughts on how you can even build up the county assemblies. County assemblies do not have capacities to do many of these things. You cannot claim that you want to give a grant or loan but you do not want to give the securities and ways of ensuring that money is put to prudent use.

As a House, we may soon have to pronounce ourselves and say, despite the fact that you are assured as a loan giver that your money will be paid because this is government to government, if you are putting money that will be wasted, then it is better that we do not accept it unless the framers and drafters of this programme can consider ways of capacitating our county assemblies so that they may be able to check. I am glad



that many of the county assemblies that have been in this phase continue to do their work despite the continuous challenges.

I know of experiences in my county; if the county government has given a pending bill statement of about Kshs1 billion, when Members of County Assembly (MCAs) sit and take the County Executive Committee members (CECs), department by department and tell them, you are the CEC in charge of transport, for example, you are claiming that there are pending bills of Kshs200 million, please show us the roads done. In that room you have MCAs from each and every part of the county. They cannot cheat. That bill of Kshs200 million instantly reduces from Kshs200 million to maybe Kshs20 million or Kshs30 million.

That is the kind of support that we are saying needs to be given to our county assemblies. When we are structuring this KUSP, if we do not incorporate this, I do not see how next year I will support the inclusion of this programme in our budget because this is not free money. We will pay for it at the end of the day. Therefore, if you are not assured that it will give us value for money, there is no need to support this project.

There are many things that we would wish to be considered, for instance, the issue of distribution of Level Five Hospitals. We had a good presentation from the Commission for Revenue Allocation (CRA) and one of the Non-Governmental Organisations (NGOs) about the real time challenges that our hospital institutions continue to face. One of the challenges is that we do not fund and we have not set any programme to fund hospitals that otherwise do government functions either because they are mission hospitals or they are owned by charity organisations.

Therefore, since we are government, there is nothing that we can lend them yet it is extremely important. It would even be prudent because they manage their resources way better than some of our hospitals. And we must provide the framework. Tenwek Mission Hospital, in Bomet County, for example, serves almost the entire South Rift region in ophthalmology issues and open heart surgery. Everybody troops to this hospital. They are overstretched. They are doing work that would have otherwise been done by the Government but we have not been able to give them a framework of support.

You cannot gainsay the amount of work that Kijabe Mission Hospital continues to do in this country yet the Government does not consider to do or give any kind of aid and support to such institutions in terms of health. We need to rethink and think creatively about the shared institutions between counties. A practical example is counties that border each other where hospitals services are strained.

I have witnessed and even intervened in disputes where residents of neighbouring counties are telling each other, please show me your Identification Card; to be allowed to access services. If you come from the neighbouring county, you will have to wait until residents of the home county have been served first so that you can be attended to. This is more so because by 10 or 11 O'clock, you are told that the doctor has run short of surgical equipment *et cetera*.

People begin to complain and check each other on these queues and say, those that are from the neighbouring county have to wait because this is not their hospital. We must provide a framework for these Level Five hospitals that have that kind of strain.

Many thoughts have been put forth. Despite the support that is given to this, next year when we do this Bill, of great importance and that which will inform me as a legislator before making my decision on whether to support or not, will be; how much of the views that have been raised by Senators and MPs have been incorporated because budget making is an engaging process. We should sit, listen and incorporate the views of leaders. When Sen. Ledama Olekina speaks, he does not speak for himself or his family. He speaks on behalf of the people of Narok County who do not have any other place to tell the Government it needs to listen to them other than through the voice of their Senator.

Therefore, I request, that when our contributions are finally done, the HANSARD and the report of the contributions of Senators, be bound properly and presented in both hard and soft copy to the National Treasury so that they for once, may listen to the voice of the representatives of the people.

**The Temporary Speaker** (Sen. Pareno): Very good contribution. I hope we can adopt that policy as a Senate. It would be of help to this Senate.

Proceed, Sen. Mwangi.

**Sen. Mwangi:** Madam Temporary Speaker, I thank you for giving me a chance to also add my voice to the Division of Revenue Bill. Concerning the Agriculture Sector Development Support Programme, we know what is lacking in this country in matters pertaining to agriculture. In Kenya, there is no serious farming that can be done without developing water supplies all over the country.

It is time the Government thought of developing water systems in the country so that people can get involved in agriculture. At a time like this, we have rain but in quite a number of months across the year, there is no rain and so farmers are not able to farm because they have no water. They cannot irrigate their land.

The other issue is market for farm produce. If farmers get water and produce their food products, it should be marketed. The Government should have a section that deals with marketing, and particularly now when our supermarkets are failing. Nakumatt has failed and we have knowledge of other supermarkets which are going under. This means that very soon our farm produce will not have market. The Government should spend some of this money to survey market for farm produce and also give us adequate water for irrigation.

There is also the issue of water tower protection for climate change. Let us not decorate this Bill with very big names which have no meaning. The main issue is water for irrigation. Let us have dams and adequate water for our farms. There is no point of talking of climate when you have no food in your homes. First, we should have enough water to do farming and also have market for our food as I said before instead of creating many things here, for instance, water tower protection and climate change, mitigation and adaptation programme. That does not make any sense.

Let us give the Ministry of Water adequate money so that they can give us enough water for irrigation. Let us give the Ministry of Water enough money so that they can build dams, collect surface water and adequate reticulation system for ---

**The Temporary Speaker** (Sen. Pareno): Order, hon. Senators. Sen. Mwangi Paul Githiomi, you will have a balance of 16 minutes when the matter is next placed on the Order Paper.

**Sen. Mwangi:** Thank you, Madam Temporary Speaker.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Thursday, 7<sup>th</sup> June, 2018 at 2.30p.m.

The Senate rose at 6.30 p.m.